

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis  
Bankruptcy Judge  
Sacramento, California

October 22, 2013 at 3:00 p.m.

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1. [13-22901](#)-E-13 VICTOR/SANDRA GARCIA MOTION TO CONFIRM PLAN  
PGM-3 Peter G. Macaluso 8-28-13 [[61](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 28, 2013. By the court's calculation, 55 days' notice was provided. 42 days' notice is required.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits. Upon review of the Motion, supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

**The court's decision is to deny the Motion to Confirm the Amended Plan.** No appearance at the October 22, 2013 hearing is required.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

**TRUSTEE'S OBJECTION**

The Trustee opposes confirmation offering evidence that the Debtor is \$500.00 delinquent in plan payments, which represents one month of the plan payment. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

Also, the Trustee argues that the Debtor has failed to provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. §521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3).

The Chapter 13 Trustee objects to the motion on the basis that the plan is not the Debtors' best effort. Debtors are above median income and propose a 60 month with no guaranteed dividend to unsecured claims. Trustee argues that Debtors are not proposing to contribute all disposable income into the plan. Trustee states Debtors have not proposed to increase the plan by \$900.00 after the domestic support is paid off in approximately 13 months (May 2014).

Furthermore, according to the Trustee's calculations of Form B22C (Dckt. 32), the Debtors' monthly disposable income totals \$330.27, with the unsecured claims receiving approximately \$19,816.20 over 60 months. Trustee argues that Debtors deduct \$1,927.97 for taxes but are paying approximately \$1,527.97 toward tax deductions from payroll according to Schedule I. Therefore, \$400 should be added back. The Trustee also requires more evidence of the health care expense and \$430 should be added back. The Trustee also objects to telecommunications expense, charity deduction, expenses for prepetition priority claims and retirement deductions.

The Trustee also states that he has requested updated paystubs for both debtors, a copy of their 2012 tax return and evidence of the medical expenses and auto insurance deducted on Schedule J, which have not been provided to date.

#### **DEBTOR'S RESPONSE**

Debtors respond, stating that the Trustee is correct that the plan should pay no less than \$267.45 per month, or \$16,047.00. The Debtors also acknowledge the Trustee's objection to Schedule J, line 19, and the need to increase the disposable income in month fourteen, after the domestic support obligations ends.

Debtors also state the extension is due October 15, 2013 but because of the government shutdown, the proof of claim has not been determined. Debtor's counsel states he will produce these documents before the hearing.

Debtors request that the objection be sustained and the plan not be confirmed.

The amended Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

2. [12-37003](#)-E-13 DOROTHY BROOKINS  
PGM-6 Peter G. Macaluso

MOTION FOR COMPENSATION FOR  
PETER G. MACALUSO, DEBTOR'S  
ATTORNEY(S), FEE: \$3,500.00,  
EXPENSES: \$500.00, MOTION TO  
RELEASE FUNDS FROM COURT  
REGISTRY  
9-24-13 [[195](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 24, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion for Compensation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion for Compensation is granted.** No appearance required.

Law Offices of Peter G. Macaluso, Counsel for Debtor, seeks attorney fees in the amount of \$3,500.00 and additional expenses in the amount of \$500.00. Counsel states that he has served as the Debtor's attorney since January 29, 2013, as the Debtor filed the case in pro per on September 20, 2012. Counsel states he has not received a retainer in this case but instead seeks to obtain money deposited as ordered by the Court to the Clerk of the court on January 10, 2013, Dckt. 60. Counsel argues that these additional fees are actual, reasonable, necessary and unanticipated as post-confirmation work required.

#### **FEES ALLOWED**

The hourly rates for the fees billed in this case are \$300.00/hour for counsel for work and fees agreed on between the Debtor and Counsel in the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys. Dckt. 197. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of \$3,500.00 and costs in the amount of \$500.00 are approved and authorized to be paid by the Trustee from the

available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Compensation filed by Counsel for Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Law Offices of Peter G. Macaluso, Counsel for Debtor, is allowed the following fees and expenses as a professional of the Estate:

Law Offices of Peter G. Macaluso, Counsel for Debtor  
Applicant's Fees Allowed in the amount of \$ 3,500.00 and additional expenses in the amount of \$500.00.

3. [13-30803](#)-E-13 MARK/TAMARA IRONS  
MOH-1 Michael O'Dowd Hays

MOTION TO VALUE COLLATERAL OF  
GMAC MORTGAGE USA CORPORATION  
10-7-13 [[20](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 7, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Motion to Value Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to grant the Motion to Value Collateral and determine creditor's secured claim to be \$0.00.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 3 Whitewood Way, Chico, California. The Debtor seeks to value the property at a fair market value of \$236,596.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$291,115.02. GMAC Mortgage USA Corporation's second deed of trust secures a loan with a balance of approximately \$31,193.05. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of GMAC Mortgage USA Corporation secured by a second deed of trust recorded against the real property commonly known as 3 Whitewood Way, Chico, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$236,596.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

4. [11-44406](#)-E-13 PHILLIP/LORNA HERBERT  
MWB-3 Mark W. Briden

MOTION FOR COMPENSATION FOR  
MARK W. BRIDEN, DEBTORS'  
ATTORNEY(S), FEES: \$663.00,  
EXPENSES: \$22.40  
9-12-13 [[40](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 12, 2013. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion for Compensation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion for Compensation is granted.** No appearance required.

Law Offices of Mark W. Briden, Counsel for Debtors, seeks additional attorney fees in the amount of \$663.00 and costs in the amount of \$22.40. Counsel argues that these additional fees are actual, reasonable, necessary and unanticipated as post-confirmation work required.

#### **Description of Services for Which Fees Are Requested**

1. Reviewed loan modification agreement from the creditor, filed a motion to approve the loan modification. Counsel suggests this motion to modify plan was unanticipated, as the Creditor agreed to provide loan modification.

The hourly rates for the fees billed in this case are \$195.00/hour for counsel for 3.40 hours of unanticipated and substantial work. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of \$663.00 and costs in the amount of \$22.40 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Compensation filed by Counsel for Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Law Offices of Mark W. Briden, Counsel for Debtors, is allowed the following fees and expenses as a professional of the Estate:

Law Offices of Mark W. Briden, Counsel for Debtors  
Applicant's Fees Allowed in the amount of \$663.00 costs in the amount of \$22.40.

5.	<a href="#"><u>09-22607</u></a> -E-13	LOIS GRAHAM	MOTION TO INCUR DEBT
	PGM-3	Peter G. Macaluso	9-20-13 [ <a href="#"><u>90</u></a> ]

**Final Ruling:** The Debtor having filed a "Withdrawal of Motion" for the pending Motion to Incur Debt, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Incur Debt, and good cause appearing, **the court dismisses without prejudice the Debtor's Motion to Incur Debt.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Incur Debt having been filed by the Debtor, the Debtor having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

**IT IS ORDERED** that the Motion to Incur Debt is dismissed without prejudice.



Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 17, 2013. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Confirm the Modified Plan is granted.** No appearance required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 19, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

7. [09-41712-E-13](#) **TERRENCE/KRYSTA MURPHY** **MOTION TO MODIFY PLAN**  
**SAC-2** **Scott A. CoBen** **9-6-13 [[55](#)]**

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 6, 2013. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to deny the Motion to Confirm the Modified Plan.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Trustee opposes confirmation offering evidence that the Debtor is \$1,700.00 delinquent in plan payments under the proposed plan. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

The Trustee also states that the plan will complete in more than the 60 months proposed, possibly taking 67 months. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d).

Lastly, the Trustee states that the Debtor's Declaration stating that he has had a decrease in income does not match the Debtor's Exhibit A, current change in expenses, as the net monthly income appears to be exactly the same. Trustee states that Debtors should provide a more current accounting of their income.

The modified Plan complies does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of

the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

8. [13-30712](#)-E-13    **MICHAEL/KIMBERLY DAVIS**                      **OBJECTION TO CONFIRMATION OF**  
NLE-1                      **Mary Ellen Terranella**                      **PLAN BY DAVID CUSICK**  
9-17-13 [[24](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 17, 2013. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

**Final Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

**The court's decision is to overrule the Objection.** No appearance at the October 22, 2013 hearing is required.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtors cannot afford to make the payments. Debtors filed a Motion to Value the claim of OneWest Bank, FSB set to be heard October 8, 2013. The court having granted the motion to value claim, the Trustee's objection is overruled.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on August 14, 2013 is confirmed, and

counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

9. [13-30914-E-13](#) **MICHAEL SIMMS** **OBJECTION TO CONFIRMATION OF**  
**NLE-1** **Peter G. Macaluso** **PLAN BY DAVID CUSICK**  
**9-26-13 [[18](#)]**

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 26, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to sustain the Objection.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor cannot make the payments under the plan or comply with the plan. Trustee States that Schedule I lists income from the debtor's significant other in the amount of \$1,000.00 per month and Debtor filed an attachment to Schedule I, which lists anticipated additional income from boxing income. Trustee states the Debtor may not have the ability to make the plan payments set forth in the proposed plan, since the income from the boxing matches is anticipated and has not yet been earned or generated.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

10.	<a href="#"><u>13-30915-E-13</u></a> <b>PETER/THERESA SMITH</b> <b>NLE-1 Timothy J. Walsh</b>	<b>OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 9-26-13 [<a href="#"><u>18</u></a>]</b>
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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney, on September 26, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to sustain the Objection.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that plan relies on a pending Motion to Value Collateral of PNC Mortgage. The court having denied the Motion to Value, the Trustee's objection is sustained.

The Trustee also states that the Debtor appears to be in the process of a trial loan modification, with the trial period plan reducing the mortgage payment to \$1,856.60. The plan calls for ongoing mortgage payments in the amount of \$2,064.81. Therefore, it is not clear to the Trustee if he should

pay the amount listed in Section 2.08 of the plan or the trial loan modification payment (\$208.21 less than listed in the plan).

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

11.	<a href="#">13-30915</a> -E-13	PETER/THERESA SMITH	MOTION TO VALUE COLLATERAL OF
	TJW-1	Timothy J. Walsh	PNC BANK, N.A.
			9-10-13 [ <a href="#">14</a> ]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Incorrect Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 5, 2013. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Motion to Value Collateral has not been correctly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

**The court's tentative decision is to deny the Motion to Value Collateral without prejudice.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1100 Pintail Dr., Suisun City, California.

However, Creditor PNC Bank, N.A. was not properly served. The address Debtor served Creditor is not the address listed with the FDIC. The Debtor has served an address that this court does not recognize as an address that Creditor PNC Bank, N.A. has designated with the FDIC. It appears the address served, 249 Fifth Avenue, One PNC Plaza, Pittsburgh, Pennsylvania, is the address for PNC Financial Services Group, Inc., a separate entity from PNC Bank, N.A. The court will not guess whether the correct legal entity has been served at the proper address. Therefore, the motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice.

12.	<a href="#"><u>10-22717-E-13</u></a>	JORGE/NANCY GONZALEZ	MOTION TO APPROVE LOAN
	MBB-2	Aaron C. Koenig	MODIFICATION
			9-16-13 [ <a href="#"><u>104</u></a> ]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors', Debtors' Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 16, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material



factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Approve the Loan Modification is granted.** No appearance required.

Bank of America, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment to \$1,742.47 and the payment may adjust periodically. The modification will capitalize the pre-petition arrears and provides for stepped increases in the interest rate from 2.00% to 4.25% over the next 22 years.

There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve the Loan Modification filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Creditor, Bank of America, N.A. are authorized to amend the terms of their loan with debtors, which is secured by the real property commonly known as 149 Big Valley Road, Folsom, California, and such other terms as stated in the Modification Agreement filed as Exhibit "1," Docket Entry No. 106, in support of the Motion.

13.	<a href="#">12-36018-E-13</a>	IMELDA/ANTONIO BAUTISTA	MOTION TO APPROVE SHORT SALE
	JBR-2	Jennifer B. Reichhoff	9-24-13 [ <a href="#">101</a> ]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on September 24, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(a)(2). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to



be the equivalent of a statement of nonopposition. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

**The court's tentative decision is to grant the Motion to Permit Debtor to Sell Property.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

#### **PROCEDURAL ISSUES**

The moving party filed the Debtors' declaration and an exhibit showing an estimated statement of sale in this matter as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Revised Guidelines for the Preparation of Documents, ¶(3)(a). Counsel is reminded of the court's expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1). This failure can be cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

#### **DISCUSSION**

The Bankruptcy Code permits Debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Here, Debtors propose to sell the real property located at 216 Wildflower Drive, Roseville, California. The sale price is \$255,000.00, which Debtor asserts is the fair market value. The buyer is Tri Bui, a party not related to the Debtors. The title company is Fidelity National Title. The Debtors intend to pay the creditors with lien and security interest on the subject property in accordance with the sales agreement.

The Trustee filed a non-opposition response stating that he does not have an objection to the Debtor's Motion to Approve Short Sale if the creditors with secured claims do not object.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The Motion to Permit Debtor to Sell Property is granted, the court having considered any additional offers from other potential purchasers as stated on the record for the hearing.

#### **ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to sell property filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Debtors Imelda Palmero Bautista and Antonio Ramat Bautista ("Debtor") is authorized to sell to Tri Bui or nominee ("Buyer"), the residential real property commonly known as 216 Wildflower Drive, Roseville, California ("Real Property"), on the following terms:

1. The Real Property shall be sold to Buyer for \$255,000.00, on the terms and conditions set forth in the Motion.

2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.

3. The Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

4. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount equal to six percent (6%) of the actual purchase price upon consummation of the sale.

5. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Debtors. Within fourteen (14) days of the close of escrow the Debtors shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

14. [13-26718](#)-E-13 ESPERANZA ZAVALA  
PGM-1

MOTION TO APPROVE LOAN  
MODIFICATION  
9-16-13 [[32](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on September 16, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or

opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to grant the Motion to Approve the Loan Modification.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

JPMorgan Chase Bank, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment to \$914.17 for the first five years, then \$1,062.05 for year six, \$1,218.15 for year 7 and finally \$1,298.44 for years eight through twenty-three. The modification will capitalize the pre-petition arrears and provides for stepped increases in the interest rate from 2.000% to 4.500% over the next 23 years.

#### **PROCEDURAL ISSUES**

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here the moving party reused a Docket Control Number. The moving party filed Motion to Extend Automatic Stay with Docket Control Number PGM-1. And now, the moving party filed the Motion to Approve Loan Modification with the same Docket Control Number. This is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

#### **OPPOSITION**

The Trustee objects to the motion because the loan modification agreement attached by the Debtor is not a final document and the Debtor not appear to have sufficient funds to make the modified payment.

The Trustee argues that the most recent loan modification agreement was signed by the Debtor on August 28, 2013 and Creditor on September 6, 2013. Therefore, the agreement attached to the Motion to Approve Loan Modification, which was signed on July 27, 2013, is not the most recent agreement with the accurate principal balance, interest, and payment amount.

Additionally, the modified payment of \$914.47 does not include real estate taxes and property insurance. This payment is only for principal and interest.

#### **DEBTOR'S RESPONSE**

The Debtor filed a supplemental declaration to confirm that the modified mortgage payment is \$914.17 (principal and interest) plus escrow payment of \$211.29. The total payment is \$1,125.46. However, the Debtor is

willing to reduce other expenses such as food and recreation allowance to keeping her home.

## **DISCUSSION**

The agreement signed by the Debtors on August 28, 2013 (Claim # 9) has different terms than the agreement signed by Debtors on July 2013 agreement submitted by the Debtor. The terms differ with respect to total principal balance, interest rate changes over the 23 year period, total number of payments, payment amount, and payment beginning date. The Federal Rule of Bankruptcy Procedure 4001(c)(1)(B) require a complete loan modification agreement with list of material provisions of the proposed agreement. However, the court has been able to review the document from the proof of claim registrar.

Furthermore, the Debtor is single and the changes in expenses documented in the supplemental pleadings is not significant.

While the Trustee raises valid points with respect to Debtor's ability to make the modified payment under the current plan, these issues should be reserved for confirmation.

With respect to whether the Modification Agreement filed is the correct agreement, the court approves the Modification on the Terms set forth in Loan Modification Agreement filed with Proof of Claim No. 9-1, Pages 35-42.

The motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve the Loan Modification filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Esperanza Huato Zavala, Debtor, is authorized to amend the terms of her loan with JPMorgan Chase Bank, N.A., which is secured by the real property commonly known as 2267 Atherton Court, Fairfield, California, California, and such other terms as stated in the Loan Modification Agreement filed with Proof of Claim No. 9-1, Pages 35-42.

15. [11-44820](#)-E-13    RODEL MAULINO AND MIMSY    MOTION TO EMPLOY ABDALLAH REAL  
MLA-10    ABARA-MAULINO    ESTATE AS BROKER(S)  
Mitchell L. Abdallah    9-30-13 [[134](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors' Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on September 30, 2013. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Motion to Employ has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

**The court's tentative decision is to deny the Motion to Employ.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Counsel for Debtors, seeks to employ Abdallah Real Estate to assist the Debtors in the sale of their real property located at 6520 Beamer Way, Rio Linda, California. Counsel states that he is the managing attorney in the Abdallah Law Group, P.C. and a real estate broker, operating a sole-proprietorship as Abdallah Real Estate.

However, the court does not have any testimony or other evidence that Abdallah Real Estate is disinterested, as required by 11 U.S.C. § 327(a).

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate, and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Attempting to be the attorney and a real estate broker for the Debtor may well create an unwaivable conflict that renders counsel unable to serve as Debtor's attorney. Counsel seeks to obtain a right to a percentage of the

value of the property. Thus, he effectively has a competing economic interest with the estate. The court questions how counsel can properly advise the Debtor, represent the best interests of the estate, and determine whether the real estate broker - while looking to collect his percentage from any sale of the property.

As the court does not have the requisite evidence that the real estate broker is not disinterested as required by 11 U.S.C. § 327(a), the Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Employ filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Employ is denied without prejudice.

16. [11-44820](#)-E-13 RODEL MAULINO AND MIMSY MOTION TO SELL  
MLA-10 ABARA-MAULINO 9-30-13 [[141](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 30, 2013. By the court's calculation, 27 days' notice was provided. 21 days' notice is required.

**Tentative Ruling:** The Motion to Sell was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to deny the Motion to Sell without prejudice.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

#### **PROCEDURAL ISSUES**

##### **Docket Control Number**

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here the moving party reused a Docket Control Number. This is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

#### **OPPOSITION**

##### **Trustee**

The Trustee does not have an opposition now that the Counsel has disclosed the relationship between the counsel and Abdallah Real Estate. However, the Trustee states that the case may be dismissed pursuant to pending Trustee's Notice of Default because the Debtor has failed to make a payment since June 25, 2013.

##### **Creditor - Select Portfolio Servicing**

Creditor of the first deed of trust, Select Portfolio Servicing, Inc. filed an opposition arguing that the Debtors propose to sell the subject property for \$130,350.00 in their Motion but the Residential Sales Agreement reflects \$115,000.00. The Creditor also argues that it will only consent to the sale of the property if the full amount of its secured claim as determined on the date demand from escrow is made. The Creditor is seeking a protective order from the Court that specifically states that the sale is condition on Select Portfolio Servicing's lien being paid in full.

#### **DISCUSSION**

The Bankruptcy Code permits the Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303.

Here, the Debtor proposes to sell his real property, located at 6520 Beamer Way, Rio Linda, California. The sales price is \$130,350.00 and the named buyer is Brevis Inc. Debtor asserts that the sale of the subject property will not be sufficient to satisfy all known liens and encumbrances on the subject property as well as the closing and escrow involved with the sale. However, Debtor states the first and second trust deed holders voluntarily agree to release their liens for less than the full amount owed. The terms are set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 144.

However, there appear to be two discrepancies. First, Debtor states that both creditors have agreed to accept less than what they are owed on their secured claims, but Creditor Select Portfolio Servicing has filed an opposition, stating they will not consent to the sale unless their claim is paid in full. Second, the sales price stated in the motion is \$130,350.00, when the Residential Sales Agreement, Exhibit A, states the sales price is \$115,000.00. Based on these discrepancies, the court denies the motion without prejudice.

A minute order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to sell property filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Debtor's Motion to Sell is denied without prejudice.



17. [13-29521](#)-E-13 ANTHONY AMMIRATO  
TSB-1

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
9-12-13 [[17](#)]

CASE DISMISSED 10/3/13

**Final Ruling:** The case having previously been dismissed, the Objection is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is dismissed as moot, the case having been dismissed.

18. [13-30221](#)-E-13 MICAELA VAN DINE AND  
TSB-2 PIOTR REYSNER  
Pro Se

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
9-12-13 [[28](#)]

CASE DISMISSED 9/9/13 AS TO  
PIOTR REYSNER ONLY

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on September 12, 2013. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

**The objection to claimed exemptions is sustained and the exemptions are disallowed in their entirety.** No appearance required.

The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure §703.140. California Code of Civil Procedure § 703.140, subd. (a)(2), provides:

If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(Emphasis added). The court's review of the docket reveals that the spousal waiver has not been filed. The Trustee's objection is sustained and the claimed exemptions are disallowed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Exemptions filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection is sustained and the claimed exemptions are disallowed in their entirety.

19. [13-30721](#)-E-13 MICHAEL/LYNETTE ALLEN  
NLE-1 Timothy J. Walsh

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID CUSICK  
9-26-13 [[22](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 26, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to sustain the Objection.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the proposed plan relies on a pending Motion to Value Collateral of CCO Mortgage. The court having denied this Motion, the Trustee's Objection is sustained.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

20. 13-30721-E-13 MICHAEL/LYNETTE ALLEN MOTION TO VALUE COLLATERAL OF  
TJW-1 Timothy J. Walsh CCO MORTGAGE  
9-10-13 [14]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Incorrect Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 10, 2013. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Motion to Value Collateral has not been correctly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

**The court's tentative decision is to deny the Motion to Value Collateral.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 49 Emerald Hills Cir., Fairfield, California.

However, the court is unable to recognize the entity "CCO Mortgage," as this entity does not appear on the California Secretary of State's database, nor does it appear to be a federally insured depository institution listed with the FDIC. A cursory search online of "CCO Mortgage" shows that CCO Mortgage is merely a division of RBS Citizens, N.A. <https://www.ccomortgage.com/index.asp>. FN.1. The court is unable to determine if the true creditor is (1) named or (2) properly served pursuant to Federal Rule of Bankruptcy Procedure 7004. Therefore, the Motion is denied without prejudice.

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FN.1. At the CCO Mortgage website the following information is provided at the "About Us" tab.

CCO Mortgage is a division of RBS Citizens, N.A., which is part of the Citizens Financial Group family of companies. A \$160 billion commercial bank holding company, Citizens

Financial Group is among the top U.S. commercial banking companies ranked by assets and deposits. Citizens Financial Group, Inc. is a subsidiary of The Royal Bank of Scotland plc, one of the largest banks in the world at year-end 2007 by assets.

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The Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice.

21. [11-21422](#)-E-13 SHMAVON MNATSAKANYAN AND MOTION TO MODIFY PLAN  
PGM-4 YERMONIYA ARTUSHYAN 9-13-13 [[102](#)]  
Peter G. Macaluso

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 13, 2013. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Confirm the Modified Plan is granted.** No appearance required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 13, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

22.	<a href="#"><u>13-31622</u></a> -E-13	TIMOTHY/VIKI HERNANDEZ	MOTION TO VALUE COLLATERAL OF
	SJD-1	Susan J. Dodds	ONE MAIN FINANCIAL
			9-10-13 [ <a href="#"><u>13</u></a> ]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 10, 2013. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$3,400.00.** No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 1994 Chevy S10 with 160,000 miles. The Debtor seeks to value the property at a replacement value of \$3,400.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred more than 910 days prior to filing of the petition, with a balance of approximately \$11,636.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$3,400.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Onemain Financial, Inc. secured by an asset described as a 1994 Chevy S10 with 160,000 miles is determined to be a secured claim in the amount of \$3,400.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the asset is \$3,400.00 and is encumbered by liens securing claims which exceed the value of the asset.

23. [13-25926](#)-E-13 GLENN/JACKIE LOWERY  
DAO-2 Dale A. Orthner

CONTINUED AMENDED MOTION TO  
VALUE COLLATERAL OF JP MORGAN  
CHASE BANK, N.A. AND/OR  
PENNYMAC MORTGAGE INVESTMENT  
HOLDINGS I, LLC  
9-30-13 [[70](#)]

CONT. FROM 9-24-13

Local Rule 9014-1(f)(1) Motion - Opposition Withdrawn.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 14, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Value Collateral was not correctly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Upon review of the Motion and supporting pleadings, opposition having been withdrawn, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

**The court's decision is to grant the Motion to Value Collateral.** No appearance at the October 22, 2013 hearing is required.

#### PRIOR HEARING

At the September 24, 2013 hearing the Debtor stated that he would file an amended motion to name JPMorgan Chase Bank, N.A. to clearly identify the creditor whose claim is being valued. Further, if the Debtor determines that Pennymac Mortgage Investment Holdings, LLC is the creditor, the amended motion will add this entity. Pennymac Mortgage Investment Holdings, LLC has appeared in this contested matter, asserting it is the creditor.

The motion seeks to value the secured claim of "JP Morgan Chase Bank." However, the court cannot determine from the evidence presented which legal entity the Debtors wish the court to include in the order. The court will not issue orders on incorrect or partial parties that are ineffective. Debtor may always use Federal Rule of Bankruptcy 2004 to aid themselves in finding the true creditor.

To the extent the motion is meant to target JPMorgan Chase Bank, N.A., JPMorgan Chase Bank, N.A. - a federally-insured depository institution - was not served as required by Federal Rule of Bankruptcy Procedure 7004(h). Rule 7004(h) requires that service upon a federally-insured depository institution be made upon an officer of the institution by certified mail. Here, Debtors served CT Corporation System, the agent for service of process. Nothing in the legislative history of Federal Rule of Bankruptcy Procedure 7004(h), which was added by § 114 of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106, indicates that Congress intended for "officer" to include a registered agent. See *Hamlett v. Amsouth Bank (In re Hamlett)*, 322 F.3d 342,



346 (4th Cir. 2003). Debtor's service upon CT Corporation System, which is the registered agent for JPMorgan Chase Bank, N.A., is insufficient.

### **Creditor's Opposition**

Creditor Pennymac Mortgage Investment Holdings, LLC, (an entity neither named or served in the motion) opposes the motion, seeking time for an opportunity to appraise the subject real property. However, this opposition is not timely filed, as all written opposition is required fourteen (14) days before the hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1). This opposition was filed five (5) days before the hearing.

Creditor subsequently withdrew its opposition to the motion on October 15, 2013, Dckt. 78.

### **DEBTOR'S SUPPLEMENTAL PLEADINGS**

Debtor filed supplemental pleadings, moving to value the claim of JPMorgan Chase Bank, N.A. and/or PennyMac Mortgage Investment Holdings I, LLC, for the non-residential real property located at 24552 Lowe Street, Foresthill, California.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property and seeks to value the property at a fair market value of \$60,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

JPMorgan Chase Bank, N.A. and/or PennyMac Mortgage Investment Holdings I, LLC's first deed of trust secures a loan with a balance of approximately \$255,364.39. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$60,000.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JPMorgan Chase Bank, N.A. and/or PennyMac Mortgage Investment Holdings I, LLC secured by the non-residential real property commonly known as 24552 Lowe Street, Foresthill, California, is determined to be a secured claim in the amount of \$60,000.00, and the balance of the claim is a general unsecured claim to be paid through the

confirmed bankruptcy plan. The value of the subject real property is \$60,000.00 and is encumbered by liens securing claims which exceed the value of the subject real property.

24. [09-29827](#)-E-13 GUY/KATHLEEN MCMILLON MOTION TO VALUE COLLATERAL OF  
JT-2 John A. Tosney THE BANK OF NEW YORK MELLON  
9-6-13 [[38](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 4, 2013. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00.** No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 7249 W. 4th Street, Rio Linda, California. The Debtor seeks to value the property at a fair market value of \$280,000.00 as of the petition filing date. The Real Estate Appraiser's Appraisal is evidence of the property's fair market value.

The first deed of trust secures a loan with a balance of approximately \$394,101.97. The Bank of New York Mellon's second deed of trust secures a loan with a balance of approximately \$84,096.91. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of the Bank of New York Mellon secured by a second deed of trust recorded against the real property commonly known as 7249 W. 4th Street, Rio Linda, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$280,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

25. [08-39528](#)-E-13 GREGORY/YVONNE DEAL  
JT-8 John A. Tosney

MOTION TO VALUE COLLATERAL OF  
CITIBANK, N.A.  
9-20-13 [[108](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 20, 2013. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00.** No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2329 Independence Trail, Plumas Lake, California. The Debtor seeks to value the property at a fair market value of \$158,000.00 as of the petition filing date. A certified

Appraiser's Appraisal of the property value is evidence of the asset's fair market value.

The first deed of trust secures a loan with a balance of approximately \$252,689.00. Citibank, N.A.'s second deed of trust secures a loan with a balance of approximately \$63,663.38. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Citibank, N.A. secured by a second deed of trust recorded against the real property commonly known as 2329 Independence Trail, Plumas Lake, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$158,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

26.	<a href="#"><u>13-32531</u></a> -E-13	DAVID/LORI JOHNSON	MOTION TO EXTEND AUTOMATIC STAY
	BLG-1	Bruce Charles Dwiggin	10-1-13 [ <a href="#"><u>8</u></a> ]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, Debtor, Chapter 13 Trustee, and Office of the United States Trustee on October 1, 2013. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Motion to Extend Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a

final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to grant the Motion to Extend the Automatic Stay.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the Court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtors seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past year. The Debtors' prior bankruptcy case (No. 11-47591-B-13) was dismissed on August 13, 2013, after Debtors defaulted on their plan payments. See Order, Bankr. E.D. Cal. No. 11-47591-B-13, Dckt. 35, August 13, 2013. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors – including those used to determine good faith under §§ 1307(c) and 1325(a) – but the two basic issues to determine good faith under § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

*Elliot-Cook*, 357 B.R. at 814-815.

Here, Debtors state that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed, as unexpected and necessary expenses arose during the prior bankruptcy case, which are now behind her. The Debtors state that they had to repair one of their vehicles, which cost approximately \$8,000.00, in addition to moving their son down to Southern California for college. Debtors state they could not afford to make the plan payment, the repairs and the cost of their son to attend school.

Debtors testify that these events are now behind them, that they have purchased a new vehicle, and their son is now settled down in southern

California. Debtors state their plan payment will now be lower than their previous case and they will be able to maintain their plan payments.

The Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

27.	<a href="#"><u>13-27835-E-13</u></a>	<b>JEFFREY/MONICA JACKSON</b>	<b>OBJECTION TO CLAIM OF CENTRAL</b>
	RWH-4	Ronald W. Holland	<b>MORTGAGE COMPANY, CLAIM NUMBER</b>
			<b>5</b>
			<b>8-29-13 [<a href="#">51</a>]</b>

Local Rule 3007-1(c)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Counsel for respondent creditor, and Office of the United States Trustee on August 29, 2013. By the court's calculation, 54 days' notice was provided. 44 days' notice is required.

**Tentative Ruling:** This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

**The court's tentative decision is to set the Objection to Proof of Claim number 5 of Central Mortgage Company for an evidentiary hearing.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If

the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Proof of Claim at issue, listed as claim number 5 on the court's official claims registry, asserts \$337,905.64 secured claim, with **\$58,298.26** stated in arrears. The Debtor objects to the Proof of Claim specifically as to the amount of the arrears stated in Paragraph 4, because Central Mortgage Company ("Creditor") has not correctly accounted for the changes in the amount of the required payments, which is interest only, that has occurred since the inception of this loan. Debtor states that based on the inconsistent demands for payment and the amounts stated to bring the account current prior to the first Chapter 13 case, it is difficult to determine the proper amount of arrears that existed at the time the case was filed.

Debtor argues that in a prior case filed by Debtors, Case No. 2011-28324, Creditor paid a wholly pre-petition claim to Placer County for real property taxes, although it was provided for in the plan. Debtors states that Creditor first set the claim to be paid outside of the plan over a one-year period, then filed an Amended Proof of Claim, which added the amount paid to the original proof of claim, which made the amount due to Creditor inconsistent and incorrect.

Debtor claims that the accounting by Creditor does not take into account the changes in the required payment on the variable interest, interest-only loan. Debtors state the claim should be about **\$36,578.58**.

Debtor contends that the Loan History Statement, the two Notice of Rate Adjustments and the two Notice of Mortgage Payment Changes are inconsistent. Debtor also states that the amount of arrears stated in the proof of claim filed in the prior case, does not state the correctly calculated amount for the arrears at that time. Debtors argue that Creditor is attempting to collect the payment they made to Placer County for taxes directly through their loan.

## **OPPOSITION**

Creditor Central Mortgage Company objects, stating that several of the factual allegations made by Debtors are incorrect. First, Creditor states that their claim does in fact identify changes in the interest rate that have occurred over the life of the loan. Creditor states Debtor's allegations are without merit and that the demands made are consistent within the appropriate context. Creditor states the Notice of Default was calculated solely on the outstanding payments at that time and not inclusive of additional fees and costs. Additionally, Creditor states the proof of claims filed in the prior case are consistent, the only difference being the tax advances being included in the Amended Proof of Claim.

Creditor does not dispute that it paid the Placer County pre-petition tax claim in Debtors' prior case and added the same to its claim amount in the Amended Proof of Claim. Creditor states that due to Debtors' significant delinquency and failure to tender their monthly payments, despite the notices of payment change, Creditor's accounting reflects the payment amount based on the contractual due date and that the accounting will not reflect changes in the payment amount until all payments required under the previous payment amount are received.

Creditor also states that it is in the process of reviewing the Chapter 13 Trustee's records of disbursement from Debtors' prior case and will supplement its response once it has researched the issue.

Creditor does not dispute that the Note, for the first ten years, requires interest-only payments. However, Creditor argues that Debtors' allegations that Creditor's accounting is inaccurate based on subsequent payment change notices and without any explanation is not enough to overcome the prima facie validity of the claim, especially when the claim does in fact account for such payment changes. Further, Creditor states due to Debtors' delinquency, while the payment changes were noticed, they are not reflected on the accounting because Debtors were behind on their payments and the accounting reflects the contractual amount due and owing.

Additionally, Creditor argues that the Notice of Rate Adjustment dated October 10, 2011, was not transmitted to the Chapter 13 Trustee because Federal Rule of Bankruptcy Procedure 3002.1 was not in effect until December 1, 2011, and it was not required to notice the Trustee at that time. The Creditor also states the reference to "principal and interest" is template language and that it is not disputed that the Note requires interest-only payments for the first ten years.

Creditor opposes all references and disputes regarding the arrears in the proof of claim and amended proof of claim filed in Debtors' prior Chapter 13 case, because it is irrelevant, the case being dismissed and Debtors' opportunity to object has passed.

Creditor asserts that this case necessitates an evidentiary hearing to determine a final accounting. Creditor argues that Debtors' accounting is mere speculation and based on misguided assumptions.

## **DISCUSSION**

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Here, it appears that disputed material factual issues remain to be resolved regarding the calculation of the arrears to Creditor's Proof of Claim. Debtor admits that it is difficult to determine the amount of arrears and makes several assumptions in its calculation. Creditor also appears to be reviewing its records and needs to supplement its response. Therefore, as factual issues remain to be resolved, an evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court shall issue an Evidentiary Confirmation Hearing Order setting the following dates and deadlines:



(1) Testimony and exhibits shall be presented to the court pursuant to Local Rule 9017-1. Presentation of witnesses at the hearing is required.

(2) Debtors shall lodge with the court and serve their direct testimony statements and exhibits on or before -----.

(3) Creditor Central Mortgage Company shall lodge with the court and serve their direct testimony statement on or before -----.

(4) Evidentiary objections and confirmation hearing briefs shall be filed and served on or before -----.

(5) Oppositions to evidentiary objections shall be filed and served on or before -----.

(6) The Evidentiary Confirmation Hearing shall be conducted at -----.

28. [13-27835](#)-E-13 JEFFREY/MONICA JACKSON CONTINUED OBJECTION TO  
TSB-1 Ronald W. Holland CONFIRMATION OF PLAN BY DAVID  
CUSICK  
7-18-13 [[27](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 18, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to continue the hearing on the Objection to xx:xx x.m. on \_\_\_\_\_, 201x.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative

ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

#### **PRIOR HEARING**

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending Motion to Value Collateral. The court having denied the motion to value collateral without prejudice, the court sustains the Trustee's objection on this basis.

The Trustee also objects on the basis that the plan is not the Debtor's best effort, as the monthly unemployment income of \$1,950.00 is listed for Monica Jackson, when Debtor testified at the First Meeting of Creditors that she is now working and earning a gross income of approximately \$3,000.00 per month. Trustee argues that Debtors have additional income which should be paid into the plan.

Lastly, the Trustee states that Debtors' Schedule J fails to list expenses for property taxes and insurance. Trustee states Debtors testified that the property taxes are included in the mortgage payment, but the insurance is paid separately and amounts to \$700.00 per year, which is not included in their budget.

#### **CONTINUANCE**

The court continued the hearing to allow the Debtor to continue making plan payments under the current proposed plan while filing an objection to claim and formulating a new plan given the claims filed in this case.

The Debtor filed an objection to claim, which the court set for an evidentiary hearing on **xx:xx x.m. on \_\_\_\_\_, 201x**. Therefore, the court continues this objection to plan to follow the objection to claim.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Objection to confirmation is continued to **xx:xx x.m. on \_\_\_\_\_, 201x**.

29. [12-39437](#)-E-13 JUDY BURGER  
PGM-4 Peter G. Macaluso

CONTINUED MOTION TO CONFIRM  
PLAN  
6-21-13 [[87](#)]

**CONT. FROM 8-6-13**

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 21, 2013. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to continue the hearing on the Motion to Confirm the Chapter 13 Plan to 3:00 p.m. on October 29, 2013.** No appearance at the October 22, 2013 hearing is required.

**PRIOR HEARING**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Trustee opposes the motion on the grounds that the Debtor has not provided the Trustee with a complete Business Questionnaire and business documentation. The Trustee argues the Debtor has had more than sufficient time to provide the Trustee with these documents and has failed to do so. The Trustee states that he is unable to determine if the Debtor can afford the plan payments as Debtor has failed to provide any recent convincing evidence of the income of Debtor's business such as bank statements, a copy of the estimated quarterly tax payment for January 15, 2013, or a statement of income and expenses.

The Trustee filed a supplemental objection, stating that Debtor provided three months of bank statements for two business accounts and a business profit and loss statement. The Trustee amends his objection to narrow the issues before the court.

First, the Trustee states that he has reviewed the profit and loss statements for "Law Office of Judy Burger, APC" and determined that the average income appears to be \$22,468.69, which significantly exceeds the 2011 income reported on the Statement of Financial Affairs. The Trustee states the average expenses claimed by the Debtor appear to be \$20,050.61, which shows an average profit of \$2,334.73, which would be sufficient to make the plan payment if the Debtor had no personal expenses.

The Trustee also argues that there are some expenses that are extraordinary and some expenses which represent a reimbursement to the Debtor.

The Trustee also notes that the Debtor did not list bank accounts on Schedule B, but the bank statements received by the Trustee are for two accounts in the name of the Debtor's corporation.

The Trustee concludes that if the proposed profit and loss statements are accurate, they support the Debtor's ability to pay not only the current \$2,050.00, and potentially an additional \$1,218.07. The Trustee argues the bank statements need more explanation, including a declaration as to whether all income is put in these accounts, their usage, the extraordinary items and the ability to make payments.

Debtor responds, stating that the case is complex and the Trustee has required the Debtor to complete tax returns for the corporation for which she is a wage earner. The Debtor is currently waiting the for the CPA to complete the documentation that must be forwarded to the Trustee for review.

Debtor requested a continuance for 60 days in order to provide sufficient time for review and resolution of the remaining issues.

#### **CONTINUED HEARING**

The court continued the hearing to afford the Debtor the opportunity to have the tax returns completed and to provide the court and trustee with clear, properly authenticated evidence of the pre and post-petition finances and assets of the Debtor. By October 2013, this case will be closing in on being one-year old without a confirmed plan. To the extent that the financial information shows that a projected disposable income greater than that used by the Debtor to compute her plan payments to the Trustee, she shall include an explanation as to why such amount is higher and the location of the additional disposable income.

#### **DEBTOR'S SUPPLEMENTAL DECLARATION**

Debtor filed a supplemental declaration stating that her income from the Law Corporation and the amount of profit and/or amount in the Corporate account varies. Debtor states based on the current trend of the Law Corporation, the plan payments could be increased to \$2,650.00 (\$600 per month) which would result in a small dividend to general unsecured creditors.

#### **TRUSTEE'S REPLY**

The Trustee maintains his objection, unless the plan payment is increased by \$1,200.00 per month commencing with the next payment due October 25, 2013. The Trustee states that the increase of \$600.00 is not sufficient based on his analysis set forth in the original objection.

Further, the Trustee argues that in the event Debtor is not willing to agree to the increased payment, the Trustee has a motion to dismiss currently set for hearing at the same time as this objection and believes the case should be dismissed or converted.

#### **DEBTOR'S AND TRUSTEE'S SUPPLEMENTAL PLEADINGS**

On September 24, 2013, the Debtor filed her supplemental declaration in support of confirmation. Dckt. 114. She states that she believes that the plan payments may be increased to \$2,650.00 a month (\$600 greater than in the proposed plan) beginning in October 25, 2013.

The Chapter 13 Trustee responds, stating that the Debtor's Supplemental Declaration states nothing more than that "I don't necessarily disagree with the Trustee's analysis," she provides no statement of what is an accurate analysis. Dckt. 116. While the Debtor states that she will pay an additional \$600.00 a month into the plan, the Trustee's analysis (to which the Debtors "doesn't necessarily disagree") shows that the monthly payment needs to be increased by \$1,200.00 a month. The Trustee closes by stating that if the Debtor does not amend the plan to increase the payments by \$1,200.00 a month commencing with the October 2013 payment, the Trustee will argue that the court should dismiss the case pursuant to the separate motion to dismiss that is pending.

On October 15, 2013, the Debtor filed a further Supplemental Reply, stating,

Debtor does not object to the increased payment by \$1,200.00 per month starting October 25, 2013, the 11<sup>th</sup> month of the 60 months Plan.

Dckt. 118.

#### **DISCUSSION**

It appears that Debtor does not "disagree" with the Chapter 13 Trustee's analysis, and is willing to increase the plan payment by the \$1,200 sought by the Trustee.

However, the court is concerned that the Debtor, who has an obligation to provide truthful and accurate statements of income and expenses, has been negotiating payment amounts in this case. When the Debtor stated in her September 12, 2013 declaration under penalty of perjury that the payment should be increased by only \$600.00, was she stating in good faith under penalty of perjury that her projected disposable income was only \$2,640.00 a month. See also, Fed. R. Bankr. P. 9011 certification in pleadings filed by counsel.

Twelve days after the Chapter 13 Trustee called the Debtor on understating her projected disposable income, the Debtor quickly recants, and says that she will pay \$3,050.00 as her accurately computed projected disposable income. This causes the court concern as to the accuracy of the information provided by the Debtor and her good faith in proposing and prosecuting this Chapter 13 Plan.

The court continues the hearing one week to allow counsel for the Debtor and counsel for the Chapter 13 Trustee to consider what statements by the Debtor are accurate, what credibility the court can find in the various representations by the Debtor of projected disposable income, and whether, in light of these "negotiation representations" by the Debtor under penalty of perjury the court can find that the Debtor has and is prosecuting any plan in good faith in this case.

Further, the Debtors testimony causes the court to question how much projected disposable income has been diverted in the prior 11 months of this case. Rather than a belabored investigation, it may well be that dismissal of this Chapter 13 case and the Debtor filing a new case, with a clean slate, is the only way for this Debtor to file, prosecute, propose, and confirm a Chapter 13 plan.

The hearing on the Motion is continued to 3:00 p.m. on October 29, 2013. No further filing of pleadings or documents are permitted, except that the U.S. Trustee may file a statement of its position on or before October 25, 2013.

The parties having agreed on the plan payment, the court grants the motion, with the above stated conditions.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion to Confirm the Chapter 13 Plan is continued to 3:00 p.m. on October 29, 2013. No further filing of pleadings or documents are permitted, except that the U.S. Trustee may file a statement of its position on or before October 25, 2013.

30. [12-39437](#)-E-13 JUDY BURGER  
TSB-2 Peter G. Macaluso

CONTINUED MOTION TO DISMISS  
CASE  
5-29-13 [[73](#)]

**CONT. FROM 8-6-13, 6-26-13**

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 29, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's decision is to continue the hearing on the Motion to Dismiss to 3:00 p.m. on October 29, 2013.** No appearance at the October 22, 2013 hearing is required.

#### **PRIOR HEARING**

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on March 19, 2013. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

#### **Debtor's Opposition**

Debtor argues that the court should deny the motion to dismiss because Debtor will file a new plan prior to the hearing. The Debtor offers no evidence in support of this argument for cause for why she cannot prosecute her case.

On June 21, 2013, the Debtor filed an amended plan and motion to confirm. Plan and Motion, Dckts. 81, 82. The Debtor's prior Chapter 13 case was dismissed by order filed on September 16, 2013, because of \$23,051.94 in monetary defaults. Notice of Default and Order, Bankr. E.D. Cal. 09-41671 Dckts. 45, 48.

#### **CONTINUANCE**

The court continued the hearing on the Motion to Dismiss to follow the hearing on the Motion to Confirm.

The court having granted the Motion to Confirm, the Motion to Dismiss is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion to Dismiss is continued to 3:00 p.m. on October 29, 2013.

31. 13-24745-E-13 LORI SWAIN MOTION TO CONFIRM PLAN  
PGM-1 Peter G. Macaluso 8-30-13 [45]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 30, 2013. By the court's calculation, 53 days' notice was provided. 42 days' notice is required.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Confirm the Amended Plan is granted.** No appearance required.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.



The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 30, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

32. 12-38247-E-13 **MARTY/KATHERINE GONSMAN** **MOTION TO CONFIRM PLAN**  
**YG-6** **Yelena Gurevich** **8-30-13 [[155](#)]**

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 30, 2013. By the court's calculation, 53 days' notice was provided. 42 days' notice is required.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

**The court's decision is to grant the Motion to Confirm the Amended Plan.** No appearance at the October 22, 2013 hearing is required.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee objects on the basis that the Debtors Motion to Confirm seeks confirmation of the Debtors second amended plan filed August 30, 2013, but the most recently filed plan is dated September 12, 2013. The Trustee notes that the proof of service states that the September 12, 2013 plan was served on August 30, 2013.

Debtor's counsel responds stating that all of the documents were filed and served on August 30, 2013. Debtor states that the September 12, 2013 plan is identical and was mistakenly docketed, and it was supposed to be a courtesy copy to chambers. Counsel asserts that the documents were properly filed and served, as stated in the proof of service, Dckt. 152.

After a review of the docket, the plans appear to be identical. Further, the proof of service confirms that the plan was served on August 30, 2013. Therefore, the court will overlook the duplicate filing and the Trustee's objection is overruled.

The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 30, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

33. [13-30347](#)-E-13 ELMA VIRTUCIO  
BMV-2 Bert M. Vega

MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA, N.A.  
9-21-13 [[37](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 20, 2013. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required.**

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2025 Beryl Court, Vallejo, California. The Debtor seeks to value the property at a fair market value of \$282,000.00 as of the petition filing date. A certified Appraiser's Appraisal of the property value is evidence of the asset's fair market value

The first deed of trust secures a loan with a balance of approximately \$403,838.00. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$118,251.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 2025 Beryl Court, Vallejo, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$282,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

34.	<a href="#"><u>10-48648</u></a> -E-13	LENOR NUNEZ	MOTION TO MODIFY PLAN
	PLC-3	Peter L. Cianchetta	9-13-13 [ <a href="#"><u>37</u></a> ]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 13, 2013. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and

Federal Rule of Bankruptcy Procedure 3015(g). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

**The court's decision is to grant the Motion to Confirm the Modified Plan.** No appearance at the October 22, 2013 hearing is required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee objects on the basis that Debtor's modified plan indicates that Debtor has paid a total of \$2,192.67 to the Trustee, but the Trustee's records reflect that Debtor has actually paid a total of \$2,355.81. The Trustee states he has no objection if this is corrected in the order confirming.

Debtor responded, submitting a proposed order confirming, addressing the amount paid to the Trustee.

Debtor having addressed the Trustee's concerns, the Trustee's objection is overruled, the amendment as stated by the Debtor to be set forth in the order confirming the Plan.

The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 13, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

35.	<a href="#"><u>10-50550-E-13</u></a>	<b>RYAN/SARAH THOMAS</b>	<b>MOTION TO SELL</b>
	<b>DBJ-5</b>	<b>Douglas B. Jacobs</b>	<b>9-23-13 [<a href="#"><u>66</u></a>]</b>

Local Rule 9014-1(f)(1) Motion

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on September 23, 2013. By the court's calculation,

29 days' notice was provided. 28 days' notice is required. There was insufficient notice.

**Tentative Ruling:** The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(a)(2). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

**The court's tentative decision is to grant the Motion to Permit Debtor to Sell Property.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Bankruptcy Code permits the Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Here, the Debtors propose to sell the property located at 1983 Potter Road, Chico, California. The property is being sold to Jay Deborah Sawicky. The buyers made an offer for \$383,000.00. The Debtors first deed of trust is in the amount of \$408,000.00 and second deed of trust is in the amount of \$79,000.00.

#### **OPPOSITION**

The Trustee objects because he is not certain that the Debtor has an approval from the Creditor with the second deed of trust to sell the property. The Debtor scheduled the first deed of trust to be listed as outside. The Debtors scheduled a second deed of trust to be paid through the plan but valued at zero. Currently the second deed of trust is owned by National City Mortgage.

#### **RESPONSE**

Debtors respond, stating that the current holder of the second deed of trust is PNC Mortgage, who has been an active participant in the short sale process. However, PNC Mortgage will not consent in writing to the short sale process until this court grants this motion to move forward. Debtors state that PNC Mortgage nevertheless has agreed to the short sale. Debtors suggest that the court issue a conditional order authorizing the short sale only on condition that before the close of escrow, PNC Mortgage consents to the sale.

#### **DISCUSSION**

The court recognizes that financial institutions have been reluctant to provide written documentation on short sales and loan modifications without Debtors first receiving permission from bankruptcy courts. Therefore, the court grants the Motion to Sell pursuant to 11 U.S.C. § 363(b). The Debtor must obtain the release of the creditors' liens to clear title for the purchaser.

#### **ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to sell property filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Ryan Thomas and Sarah Thomas, the Debtors ("Debtor"), is authorized to sell pursuant to 11 U.S.C. § 363(b) to Jay and Deborah Sawicky or nominee ("Buyers"), the residential real property commonly known as 1983 Potter Road, Chico, California, APN 018-558-884-000 ("Real Property"), on the following terms:

1. The Real Property shall be sold to Buyer for \$383,000.00, on the terms and conditions set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 69.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount no more than six percent (6%) of the actual purchase price upon consummation of the sale.
5. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Debtors. Within fourteen (14) days of the close of escrow the Debtors shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

36. [13-29351](#)-E-13 SHELBY SCANLAN  
NLE-1 Nikki Farris

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID CUSICK  
9-17-13 [[30](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 17, 2013. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to sustain the Objection.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on pending motions to value collateral. The court continued the hearing on the Motion to Value Collateral of Douglas T. Shields and Horton Enterprises, Inc. to December 10, 2013, in order for the parties to confer and discuss settlement.

Moreover, Trustee states that Debtor admitted at the Meeting of Creditors that the federal income tax return for the 4-year period preceding the filing of the Petition and the claims filed by the Internal Revenue Service and Franchise Tax Board do not reflect a 2012 tax return has not been filed. Filing of the return is required. 11 U.S.C. § 1308.

Lastly, the Trustee argues that the plan is not the Debtor's best effort. Debtor is over the median income and proposes plan payments of \$150.00 for 60 months with a 1% dividend to unsecured creditors, which totals \$2,084.00. Form B22C reflects a negative \$3.79, but the Trustee believes it should be \$366.21 for 60 months with the following revisions:

1. Line 40 deducts \$350.00 for continued contributions to care of household or family members, but this expense is not listed on Schedule K

2. Line 44 deducts \$20.00 for additional food and clothing, but Debtor has not demonstrated that the additional amount claimed is reasonable and necessary, as the form requires.
3. Line 47 deducts taxes and insurance for the mortgage, which is already included under the IRS standards.

The Trustee also notes that Debtor lists an expense of \$150.00 for storage but fails to indicate how long she will be paying this expense and the plan payment should increase when the storage fee ends.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.



Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 5, 2013. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to deny the Motion to Confirm the Amended Plan.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee objects on the basis that the Debtor cannot afford to make the plan payment because the plan relies on a pending Motion to Value Collateral of Yolo Federal Credit Union. The court denying the motion on October 8, 2013, the Trustee's objection is sustained.

The Trustee also objects on the basis that the plan calls for payment of attorney fees of \$500.00 per month, but Section 2.07 of the plan proposes \$0.00 per month toward administrative claims.

The amended Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

38. [12-37353](#)-E-13 JORGE VARELA AND LILIA ORTIZ  
TOG-7 Thomas O. Gillis  
OBJECTION TO CLAIM OF  
INVESTMENT RETRIEVERS, INC.,  
CLAIM NUMBER 28  
9-16-13 [[46](#)]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Incorrect Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 16, 2013. By the court's calculation, 36 days' notice was provided. 44 days' notice is required.

**Final Ruling:** This Objection to a Proof of Claim has not been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

**The Objection to Proof of Claim number 28 of Investment Retrievers, Inc. is overruled without prejudice.** No appearance required.

The Proof of Claim at issue, listed as claim number 28 on the court's official claims registry, asserts \$24,052.89 unsecured claim. The Trustee objects to the Proof of Claim on the basis that it was not timely filed. See Fed. R. Bankr. P. 3002(c).

However, Debtor failed to provide sufficient notice. Local Bankruptcy Rule 3007-1(c)(1) provides that 44 days notice is required when opposition is to be filed and served at least fourteen (14) days. Here, the notice provided by the Movant states that opposition must be filed within fourteen (14) days. Therefore, 44 days notice is required. Only 36 days notice was provided.

Therefore, the objection is overruled.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of Investment Retrievers, Inc. filed in this case by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim is overruled without prejudice.

39. [13-30953](#)-E-13 TRAVIS GROSJEAN AND  
OBJECTION TO CONFIRMATION OF

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 26, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

**Final Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The court has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

**The court's decision is to overrule the Objection.** No appearance required.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending motion to value collateral. The court having granted the motion, the Trustee's objection is overruled.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on August 20, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

40. [13-30953](#)-E-13 TRAVIS GROSJEAN AND MOTION TO VALUE COLLATERAL OF  
SLH-1 ANNETTE PICETTI-GROSJEAN THE GOLDEN 1 CREDIT UNION  
Seth L. Hanson 9-12-13 [[14](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 11, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00.** No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 7767 Madison Ave, Citrus Heights, California. The Debtor seeks to value the property at a fair market value of \$217,040.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$245,019.00. The Golden 1 Credit Union's second deed of trust secures a loan with a balance of approximately \$16,250.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of The Golden 1 Credit Union secured by a second deed of trust recorded against the real property commonly known as 7767 Madison Ave, Citrus Heights, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$217,040.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

41. 12-37754-E-13 HECTOR/CARMEN ROMO MOTION TO VACATE DISMISSAL OF  
DRE-5 D. Randall Ensminger CASE  
9-24-13 [[116](#)]  
CASE DISMISSED 9/9/13

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on September 24, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Motion to Vacate Dismissal has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

**The court's tentative decision is to deny the Motion to Vacate Dismissal.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtors move for an order vacating the dismissal of their bankruptcy case. Debtors state their case was dismissed as a result of Debtors being over the unsecured debt limit for Chapter 13. The Motion to Vacate states with particularity (Fed. R. Bankr. P. 9013) the following grounds upon which relief is requested.

- A. The case was commenced on April 12, 2012.
- B. The case was dismissed because the Debtors exceeded the limit for amount of unsecured claims. 11 U.S.C. § 109(e)

- C. Omni Financial, a creditor with a \$4,000,000.00 general unsecured claim has agreed to reduce its claim to an unstated amount sufficient to allow Debtors to meet the 11 U.S.C. § 109(e) debt limits.
- D. A proof of claim for such lower amount will be filed seven days after the court vacates the order dismissing the case.

Motion, Dckt. 116.

The Debtors do not provide a declaration in support of the Motion. Instead, their attorney provides his declaration in which he provides the following testimony under penalty of perjury.

- A. The case was commenced on April 12, 2012.
- B. The case was dismissed because the Debtors exceeded the limit for amount of unsecured claims. 11 U.S.C. § 109(e)
- C. Omni Financial, a creditor with a \$4,000,000.00 general unsecured claim has agreed to reduce its claim to an unstated amount sufficient to allow Debtors to meet the 11 U.S.C. § 109(e) debt limits.
- D. Federal Rule of Bankruptcy Procedure 9023 and 2024, and 11 U.S.C. § 105 allow the court to grant the relief requested.
- E. Counsels legal understanding of the requirements of Federal Rule of Civil Procedure 59(e) for amending a judgment or order. He testifies that failure to vacate the order dismissing (which is not the subject of a Rule 59(e) motion) would result in "manifest injustice." (No testimony is provided as to what constitutes such "manifest injustice," but merely counsel testifying as to his factual and legal conclusion thereof.)
- F. That Federal Rule of Civil Procedure 60(b)(1) allows for vacating a judgment or order based on mistake, inadvertence, surprise, or excusable neglect. (No testimony or other evidence is provided as to any facts exist to establish mistake, inadvertence, surprise, or excusable neglect. Counsel only provides his personal factual and legal conclusions.)
- G. That 11 U.S.C. § 105 allows the court to issue any order necessary to carry out the provisions of the Bankruptcy Code.

Debtors state they have now reached an agreement with \$4 million unsecured creditors Omni Financial to file an Amended Proof of Claim in a reduced amount that will allow Debtors to be under the Chapter 13 limits for unsecured debt. Debtors state this proof of claim will be filed within seven days of an order reopening this case.

#### **TRUSTEE'S OPPOSITION**

The Trustee opposes the motion for several reasons. The Trustee states that this case was dismissed at the hearing held on June 26, 2013, the order dismissing was not entered until on September 9, 2013.

The Trustee states in the Motion to Dismiss, he raised, among other things, the Debtors eligibility to proceed in a chapter 13 case under 11 U.S.C. § 109(e), stating the Debtors were over the unsecured debt limits based on the unsecured claim of creditor Omni Financial, LLC in the amount of \$5,968,201.00. Debtors admitted that they were not eligible for Chapter 13 relief. Debtors now state they will be under the debt limit as they have reached an agreement with a creditor to amend a proof of claim.

Trustee argues that eligibility for Chapter 13 relief is established at the time of filing the petition pursuant to 11 U.S.C. § 109(e) and Debtors post-petition agreement with a creditor to reduce the amount of a claim does not alter the requirement.

Lastly, the Trustee states that his motion also argues that the petition was not filed in good faith, as the Debtors were aware of the claim from a prior case and chose to conceal this information. Trustee also states that Debtors waited until September 24, 2013 to move for an order vacating the dismissal.

#### **DISCUSSION**

The court denies the Motion to Vacate Dismissal for several reasons. First, the Debtor failed to provide any legal authority for which the court can vacate a prior order.

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Bankruptcy Rule 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Red. R. Civ. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199 (5th Cir. La. 1993). The court uses equitable principals when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so-

called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts, which if taken as true, allows the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., *MOORE'S FEDERAL PRACTICE* ¶¶ 60.24[1]-[2] (3d ed. 2010); *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Civil Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default" *Falk*, 739 F.2d at 463.

Second, Debtors have not provided any basis under Rule 60(b) for the court to vacate the dismissal. Rule 60(b) does not provide a basis for the Debtors having made a post-petition agreement with a creditor in order for the Debtors to be eligible for Chapter 13 relief.

Third, the court finds the Trustee's argument persuasive that 11 U.S.C. § 109(e) requires that eligibility for Chapter 13 relief is established at the time of filing the petition. The debtor must owe less than \$383,175 in unsecured debt and less than \$1,149,525 in secured debt when the petition is filed. 11 U.S.C. § 109(e). Here, the Debtor is seeking to make a post-petition agreement to reduce its unsecured debt with a creditor. Therefore, even if the court were to vacate the order dismissing, Debtor would still not be eligible for Chapter 13 relief, as the unsecured debt at the date of the petition would still be over the limits.

Fourth, the court finds the delay in filing a motion to dismiss prejudicial. The court dismissed the case at the hearing held on June 26, 2013. The Order dismissing was entered into the record on September 9, 2013. Debtors motion was filed September 24, 2013. The court finds that the Debtors substantially delayed in filing this motion to vacate.

Lastly, the court notes that the eligibility issue was not the only concern of the court in dismissing this case. At the hearing on the Motion to Dismiss, Debtors stated that they were going to investigate engaging the services of a Chapter 11 attorney and the court continued the hearing to allow such action, but Debtors did nothing in the 49 days between hearings. Civil Minutes, Dckt. 107. The court found that Debtors were attempting to further delay the proceedings and dismissed the case. *Id.*

Further, the present motion fails to allege grounds upon which the court can either vacate (Rule 60(b)) or amend (Rule 59(e)) the order dismissing the case. The court has no idea from the Motion as to what "deal has been struck," the amount of the claims, whether the debt has been partially



forgiven, and how a post-petition debt forgiveness (if one has occurred) retroactively applies to the filing of this case.

Additionally, the cryptic motion and lack of any substantive testimony or evidence causes the court to believe that there has not been any actual debt forgiveness, but more likely a "wink and a nod deal" to mislead the court, Chapter 13 Trustee, and creditors.

In ordering the dismissal of this case, the court discussed the Debtors' lack of prosecution. At the June 26, 2013 hearing on the Motion, the Debtors argued that the court should not dismiss the case, but should continue the hearing so they could, 9 months into the case, investigate engaging an attorney to prosecute this as a Chapter 11 case.

The court also found it significant, even though Omni Financial had filed a proof of claim in the Debtors' prior case, the Debtors stated in the Schedules in this case that the amount of the Claim Omni Financial was asserting against them was "unknown." Civil Minutes, Dckt. 107.

The court delayed the entry of the order dismissing the case to afford the Debtors and their counsel to obtain an order approving a loan modification. Order, Dckt. 110. That order having been entered, the Debtors have obtained their loan modification, which is not dependent upon any confirmed plan in this case.

If the Debtors have actually obtained the forgiveness of a substantial portion of the Omni Financial debt, they may file a new bankruptcy case and truthfully state the amount of that debt under penalty of perjury on the schedules in the new case. FN.1.

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FN.1. The Debtors prior bankruptcy case was dismissed on August 14, 2012. Bankr. E.D. Cal. 12-20305. The court denied the Debtors motion to vacate the dismissal in that case. Order, 12-20305 Dckt. 96). The dismissal of this case is not an impediment to the Debtors filing another case and seeking the extension of the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B).  
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Based on the lack of grounds and evidence for vacating the prior order of the court, the Motion to Vacate Dismissal is denied.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Vacate Dismissal filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied.

42. [10-39657](#)-E-13 ALFRED/HEATHER CADINHA  
GW-4 Gary H. Gale

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF GERALD L. WHITE  
FOR GARY H. GALE, DEBTORS'  
ATTORNEY(S), FEES: \$1,710.00,  
EXPENSES: \$0.00  
9-20-13 [[93](#)]

Local Rule 9014-1(f)(1) Motion

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 20, 2013. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion for Compensation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion for Compensation is granted.** No appearance required.

Law Offices of Gary H. Gale, Counsel for Debtors, seeks additional attorney fees in the amount of \$1,710.00. The fees and costs already approved in this case total \$7,536.50. Counsel argues that these additional fees are actual, reasonable, and necessary.

**Description of Services for Which Fees Are Requested**

1. Counsel reviewed the claims;
2. Counsel corresponded with relevant parties regarding foreclosure, utility payments, property tax payment and property damage claim with the insurance.

The hourly rates for the fees billed in this case are \$300.00/hour for counsel for 5.7 hours of unanticipated and substantial work. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of \$1,710.00 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

The Chapter 13 Trustee filed a statement of nonopposition to the Motion for Compensation.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Compensation filed by Counsel for Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Law Offices of Gary H. Gale, Counsel for Debtors, is allowed the following fees and expenses as a professional of the Estate:

Law Offices of Gary H. Gale, Counsel for Debtors  
Applicant's Fees Allowed in the amount of \$1,710.00.

43.	<a href="#"><u>13-27260</u></a> -E-13	DIANA REAGAN KMB-1                      Kristen Bargmeyer	CONTINUED MOTION TO VALUE COLLATERAL OF WELLS FARGO, N.A. 8-10-13 [ <a href="#"><u>37</u></a> ]
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**CONT. FROM 9-10-13**

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 10, 2013. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

**The court's tentative decision is to grant the Motion to Value the secured claim of Wells Fargo Bank, N.A.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusion of law:

#### **FIRST HEARING**

Debtor seeks to value the collateral of Wells Fargo Bank, N.A. The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the

subject real property commonly known as 470 Seahorse Dr., Vallejo, California. The Debtor seeks to value the property at a fair market value of \$245,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). It is asserted that the \$37,038.00 claim of Wells Fargo Bank, N.A. is secured by a second deed of trust.

It is asserted that Wells Fargo Bank, N.A. has a claim in the amount of \$282,258.00 which is secured by a senior deed of trust. Therefore, it is alleged that there is no value in the collateral to secure the claim of Wells Fargo Bank, N.A. secured by a second deed of trust.

#### **Creditor's Opposition**

Wells Fargo Bank, N.A. opposes Debtor's valuation of the subject property. Creditor intends to file its Proof of Claim and obtain an appraisal or other expert valuation of the subject property. Creditor seeks additional time to procure an appraisal.

However, Creditor has not filed an evidence in support of opposition. No proof of claim has been filed to date, but the Debtor confirms that Wells Fargo Bank, N.A. is asserting a claim which it contends is secured by the Property.

#### **CONTINUANCE**

The court continued the hearing to allow Wells Fargo Bank, N.A. to obtain an appraisal or other valuation evidence and share that evidence with counsel for the Debtor.

No supplemental Opposition documents or evidence have been filed to date.

Having been presented with the Movant's evidence, the court finds that the Property has a value of \$245,000.00. Therefore, there is no value in the Property to secure Creditor's claim pursuant to the junior deed of trust. The Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A.

**October 22, 2013 at 3:00 p.m.**

secured by a second deed of trust recorded against the real property commonly known as 470 Seahorse Dr., Vallejo, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$245,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

44. [13-27260](#)-E-13 DIANA REAGAN  
TSB-1 Kristen Bargmeyer

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
7-10-13 [[15](#)]

CONT. FROM 9-17-13, 8-6-13

Local Rule 9014-1(f)(2) Motion - Continued Hearing.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 10, 2013. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

**The court's decision is to overrule the Objection.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

#### **PRIOR HEARING**

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. §341. Attendance is mandatory. 11 U.S.C. §343. The meeting has been continued to August 1, 2013.

The Trustee also objects on the grounds that the plan relies on a Motion to Value Collateral, but the Debtor has failed to file the appropriate motion.

Additionally, the Trustee states the Debtor has provided conflicting attorneys' fee amounts. The plan proposes to pay \$2,575.00 and indicates Debtor paid her attorney \$1,425.00 prior to filing. The 2016(b) form agrees with the plan. However, Debtor's Rights and Responsibilities fails to indicate what amount was charged and how much was paid prior to filing. Dckt. 7. The Trustee states he is unable to determine the amount of attorney fees in this case.

Lastly, the Trustee argues that the plan may fail liquidation. Debtor lists a self-titled trust with no value. The Trustee states he has been requesting a copy of the Trust along with other required documents, but has not received anything. The Trustee states he is unable to verify the assets held in the trust.

Debtor responded, stating that they would attend the 341 meeting continued to August 1, 2013. Debtor stated the Motion to Value has been filed and set for hearing on August 27, 2013. Counsel states that a recent death in the family has upset her work schedule. The court confirms that a Motion to Value was filed July 31, 2013.

A review of the Motion to Value Collateral reveals several defects. First, the moving party failed to use a Docket Control Number. The Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

Second, the Local Rules require that movant's notice of the hearing disclose whether or not written opposition to the motion is required. See Local Bankr. R. 9014-1(d)(3). The notice provided here did not so specify. This is improper.

Lastly, the pleading title motion is a combined motion and points and authorities in which the grounds upon which the motion is based are buried in detailed citations, quotations, legal arguments, and factual arguments (the pleading being a "Mothorities") in which the court and Plaintiff are put to the challenge of de-constructing the Mothorities, divining what are the actual grounds upon which the relief is requested (Fed. R. Civ. P. 7(b) and Fed. R. Bankr. P. 7007), restate those grounds, evaluate those grounds, consider those grounds in light of Fed. R. Bankr. P. 9011, and then rule on those grounds for the Defendant. The court has declined the opportunity to provide those services to a movant in other cases and adversary proceedings, and has required debtors, plaintiffs, defendants, and creditors to provide those services for the moving party.

In such situations, the court routinely denies the motion without prejudice and without hearing. Law and motion practice in federal court, and especially in bankruptcy court, is not a treasure hunt process by which a moving party makes it unnecessarily difficult for the court and other parties to see and understand the particular grounds (the basic allegations) upon which the relief is based. The court does not provide a differential application of the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules as between creditors and debtors, plaintiff and defendants, or case and adversary proceedings. The rules are simple and uniformly applied.

#### **CONTINUANCE**

The court continued the hearing to allow the debtor to file and serve an amended Motion to Value. Debtor filed and served an amended motion and it was heard September 10, 2013. The court continued the hearing, as Creditor Wells Fargo Bank, N.A. filed opposition and requested time for an appraisal.

The Trustee's Report states that the Debtor appeared and the August 1, 2013 First Meeting of Creditors was concluded. August 1, 2013 Docket Entry. The court has now granted the Motion to Value the Claim of Wells Fargo Bank, N.A.

The Chapter 13 Plan complies with 11 U.S.C. § 1322 and 1325, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is overruled and Debtor's Chapter 13 Plan filed on May 29, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

45. [10-39863](#)-E-13    ALEXANDER TAYLOR AND    MOTION TO APPROVE LOAN  
SDB-2                    CAROLINE GUERRERO-TAYLOR    MODIFICATION  
9-16-13 [[59](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on September 16, 2013. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to grant the Motion to Approve the Loan Modification.** Oral argument may be presented by the parties at the scheduled

hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

#### **DISCUSSION**

Bank of America, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment to \$2,632.30. The modification will capitalize the pre-petition arrears and provides for an interest rate of 7.500% over the next 263 months.

#### **OPPOSITION**

The Trustee filed an opposition asserting that the Debtors may not be able to pay the mortgage based on their income and expenses. The Trustee also notes that Debtor's motion is misleading when it state "the new principal balance will be \$304,080.30 and \$170,498.53 of the new principal balance shall be forgiven." According to the loan modification agreement, the combined principal balance is for \$474,578.83 and \$170,498.53 of the combined principal is forgiven. So the new principal balance is \$304,080.30.

#### **RESPONSE**

The Debtors respond to the Trustee's opposition by arguing that there is no evidence that Debtor will not be able to make the lower mortgage payment of \$2,632.30 when they have made the mortgage payment of \$2,854.80 for the past three years.

The Debtors clarified that the current principal is \$474,478.83. The loan modification will forgiven \$170,498.53. This will bring the new principal amount to \$304,080.30.

#### **ANALYSIS**

First, while the Trustee raises valid points about Debtors' ability to make an payment under the current plan, these points should be reserved for confirmation of the plan. Second, the Debtors adequately addressed the Trustee's second point regarding the current and new principal amount.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve the Loan Modification filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Debtors are authorized to amend the terms of their loan with Bank of America, N.A., which is



secured by the real property commonly known as 220 Bella Vista Way, Rio Vista, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 62, in support of the Motion.

46. [13-27864-E-13](#) KIM/KERI WONG MOTION TO CONFIRM PLAN  
SJS-1 Scott J. Sagaria 9-6-13 [[31](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 6, 2013. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Confirm the Amended Plan is granted.** No appearance required.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 6, 2013 is confirmed, and

counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

47. [13-29964-E-13](#) DARIO COLLINS  
NLE-1 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID CUSICK  
9-17-13 [[23](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on September 17, 2013. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to sustain the Objection.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor cannot make the proposed plan payments, as the Debtor's projected disposable income listed on Schedule J is \$54.00 and the Debtor proposes a plan payment of \$200.00

The Trustee opposes confirmation offering evidence that the Debtor is \$200.00 delinquent in plan payments, which represents one month of the plan payment. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

The plan calls for payment to continue for 66 months in Section 1.03. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d).

The Debtor's plan also does not provide a dividend to unsecured creditors, leaving the dividend section blank. Failure to provide a treatment may result in a failure to discharge unsecured debts under 11 U.S.C. § 1328(a).

Lastly, the Trustee argues the Debtor has improperly provided for Santander's secured claim in class 1 of the plan, showing it as a Class 1 with \$3000 of arrears, 24% interest to be paid on arrears, no arrearage dividend, and a monthly contract installment amount of \$324. The Trustee states that based on the proof of claim filed, the last payment due is 12/9/2015 and the amount owed is \$10,043.14.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

48. [13-32964-E-13](#) LAURIE/JOSEPH MADDEN  
MOH-1 Michael O'Dowd Hays

MOTION TO VALUE COLLATERAL OF  
SIERRA CENTRAL CREDIT UNION  
10-8-13 [[10](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 8, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Motion to Value Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to grant the Motion to Value Collateral and determine creditor's secured claim to be \$0.00.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2761 Oak Knoll Way, Oroville, California. The Debtor seeks to value the property at a fair market value of \$119,028.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$142,532.08. Sierra Central Credit Union's second deed of trust secures a loan with a balance of approximately \$10,699.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Sierra Central Credit Union secured by a second deed of trust recorded against the real property commonly known as 2761 Oak Knoll Way, Oroville, California is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$119,028.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 16, 2013. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to grant the Motion to Confirm the First Modified Plan, as amended.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Trustee objects on the basis that the Debtor's modified plan proposes to reclassify HSBC Auto Finance from a Class 2 secured claim to Class 3 surrender. However, Debtor's modified plan only authorizes payments of \$9,371.85, which is the total principal paid, and does not authorize interest payments made in the amount of \$1,549.33.

The Trustee also states the Debtor's modified plan does not provide for the priority claim of Franchise Tax Board in the amount of \$3,567.64. Debtors indicate that they will be filing an objection to this claim because it is a duplicate of Proof of Claim No. 9. However, Trustee states the Debtor has not filed an objection nor has the claim been withdrawn.

Debtors respond, stating that they agree to authorize the payments made by the Trustee in the order confirming.

Debtors also state that they have filed an objection to claim, which is scheduled to be heard December 10, 2013. The court notes the Debtor filed an Objection to Proof of Claim on October 10, 2013, set to be heard December 10, 2013.

The Proof of Claim being objected to is one filed by Debtors' counsel on April 12, 2010, under the mistaken belief that the taxing agency had not filed a proof of claim. Proof of Claim No. 17, filed by Debtors' counsel for the Franchise Tax Board is for a \$3,567.64 priority claim.

However, the Franchise Tax Board filed Proof of Claim No. 9 on July 15, 2009, for a \$391.04 unsecured claim and a \$3,166.44 priority claim. It appears sufficient certain that counsel's proof of claim for the Franchise Tax Board that this error should not impede confirmation of this First Modified Plan, as amended to authorize the payments made to HSBC Auto Finance. The amendment shall be stated in the order confirming the First Modified Plan.

The First Chapter 13 Plan, as amended, complies with 11 U.S.C. § 1322, 1325, and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's First Modified Chapter 13 Plan filed on September 16, 2013, as amended to provide for the HSBC Auto Finance payments previously made by the Chapter 13 Trustee, is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

50. [10-37075](#)-E-13 RUBEN/PATRICIA AVALOS  
JT-3 John A. Tosney

MOTION TO MODIFY PLAN  
9-9-13 [[47](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 9, 2013. By the court's calculation, days' notice was provided. 35 days' notice is required.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Confirm the Modified Plan is granted.** No appearance required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 9, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

51. [11-39275](#)-E-13 MARK/DIANE WERNER  
RK-4 Richard Kwun

MOTION FOR COMPENSATION FOR  
RICHARD KWUN, DEBTORS'  
ATTORNEY(S), FEES: \$1,960.00,  
EXPENSES: \$0.00  
9-11-13 [[138](#)]

Local Rule 9014-1(f)(1) Motion

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 11, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion for Compensation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion for Compensation is granted.** No appearance required.

Law Offices of Richard Kwun, Counsel for Debtor, seeks additional attorney fees in the amount of \$1,960.00. Counsel argues that these additional fees are actual, reasonable, necessary and unanticipated as post-confirmation work required.

#### **Description of Services for Which Fees Are Requested**

1. Case administration and filing Motion to Modify the Plan, Motion for Loan Modification, 7025 Motion regarding substitution, and Motion for Compensation.

#### **OPPOSITION**

##### **Chapter 13 Trustee's Opposition**

The Chapter 13 Trustee filed an opposition asking for a clarification on the total amount of fees requested and total amount of time spent on Rule 7025 Motion. The Trustee does not oppose the motion. The Applicant bills at \$200.00/per and asked for compensation in the amount of \$1,960.00 for 9.9 hours worth of work. However, at \$200/hour, for 9.9 hours of work, the compensation should be \$1,980.00. Additionally, the Applicant claims 2.6 hours in one section for Rule 7025 Motion (Dkct. # 138, Page 3, Lines 22-23) and 2.8 hours in another section (Dkct. # 138, Lines 27-28).



## **Applicant's Response**

The Applicant requests total of \$1,960.00 in attorneys fees. The Applicant states that 2.8 hours were spent on Rule 7025 Motion, however, the Applicant has discounted .2 hours for time spent on drafting an exhibit list of itemized payments. Therefore, the Applicant is only asking for compensation for 2.6 hours spent on Rule 7025 Motion.

## **FEES ALLOWED**

The hourly rates for the fees billed in this case are \$200.00/hour for counsel for 9.9 hours of unanticipated and substantial work. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of \$1,960.00 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Compensation filed by Counsel for Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Law Offices of Richard Kwun, Counsel for Debtors, is allowed the following fees and expenses as a professional of the Estate:

Law Offices of Richard Kwun, Counsel for Debtors  
Applicant's Fees Allowed in the amount of \$1,960.00.

52. [13-26976](#)-E-13 JESSE MONTANEZ  
WW-1 Mark A. Wolff

MOTION FOR TURNOVER OF PROPERTY  
OF THE BANKRUPTCY ESTATE  
PURSUANT TO 11 U.S.C. 542(B)  
9-24-13 [[31](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 24, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion for Turnover has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion for Turnover of Property of the Estate is granted.** No appearance required.

Debtor requests that the Sacramento County Sheriff's Office turnover the property of the bankruptcy estate pursuant to 11 U.S.C. § 542(b). Debtor asserts that before filing the petition, Kwikicash, Inc. brought a lawsuit against Debtor in Sacramento Superior Court, case no. 12SC01775. Kwikicash, Inc. was awarded a default judgment in the amount of \$2,598.92 on June 1, 2012. Debtor filed bankruptcy on July 12, 2012 and stopped the collection of the judgment. After the dismissal of Debtor's bankruptcy, Kwikicash, Inc. was issued a writ of execution against Debtor on or about March 18, 2013. Pursuant to that writ, Kwikicash prepared and obtained an earnings withholdings order that was sent to the levying officer, Sacramento County Sheriff's Office. This was sent to the Debtor's employer, Sara Lee Bakery.

On May 22, 2013, Debtor filed for relief under Chapter 13 and Kwikicash, Sara Lee Bakery, and Sacramento County Sheriff's office were all sent a stop garnishment notice via first class mail and facsimile. However, the Sacramento County Sheriff's office is holding \$724.93. Debtor asserts the Sheriff's Office will not release the funds unless they received a letter directly from the Debtor's Trustee's office. Debtor states the Chapter 13 Trustee would not sign Counsel's letter and would not submit a letter but that a motion to turnover funds would have to be filed.

The Trustee filed a statement of non-opposition.

Section 542(a) requires one in possession of property of the estate to deliver such property to the Trustee. Section 542(b) requires all entities that owe a debt to the debtor, as of the date of the petition, that is both property of the estate and is "matured, payable on demand, or payable on order," to turn over or to pay that debt to or on the order of the trustee or debtor in possession. 11 U.S.C. § 542(b). Such debts commonly include accounts receivable, liquidated judgments or monies held in trust or in escrow. 5 COLLIER ON BANKRUPTCY ¶ 542.03 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

Here, the Sacramento County Sheriff's Office is holding funds that are property of the estate from a liquidated judgment from Kwikicash, Inc. Therefore, this property must be turned over to the Trustee pursuant to 11 U.S.C. § 542(b). The motion is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Turnover filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Jesse Montanez, the Debtor is authorized to receive and take possession of, and the Sacramento County Sheriff's Office is authorized and shall forthwith, pursuant to the procedures of the Sheriff's Office, turnover to Jesse Montanez, the Debtor, the \$724.93 held by the Sheriff pursuant to the Writ of Execution, Case No. 12SC01775, Levying Officer File No. 2013008882.

CONT. FROM 9-10-13

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on July 25, 2013. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Motion Incur Debt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The court's tentative decision is to deny the Motion to Incur Debt.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

#### **PRIOR HEARING**

The motion seeks permission to purchase a 2011 Nissan Rogue, VIN ending in 50411. The total purchase price is \$22,548.27, which includes taxes fees and an additional warranty. The down payment will be \$3,000.00, with the total amount financed of \$19,548.28 at an 11.9% annual interest rate (negotiated down from 21.99%). Debtors assert the monthly payments will be \$405.93 a month for 66 months. Debtor's previous vehicle, after being totaled, netted \$12,000.00 from the insurance proceeds. Debtor plans to use the insurance proceeds as the down payment of the used vehicle and seeking leave from this court to finance the remaining \$8,845.63 at 15.99% interest. Debtor also alleges an increase in hourly pay and hours at his place of employment and also alleges a decrease in expenses.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at \*1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review

post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The Debtor does not address the reasonableness of incurring debt to purchase this vehicle. The Debtor owned a 2007 BMW 323I. When it was damaged, the Debtor received insurance proceeds. The insurance company paid BMW \$8,256.69 to release the lien on the 2007 BMW. Rather than using the proceeds to purchase an affordable vehicle, the Debtor seeks to borrow an additional \$19,548.28 to purchase a \$22,548.27 vehicle.

Here, the transaction appears not to be in the best interests of the Debtor. The loan calls for a substantial interest charge – 11.9%. The Debtor offers no potential options to purchasing a 2011 vehicle for which the seller and lender have a concern about newer car depreciation.

#### **CONTINUANCE**

The court continued the hearing. The parties have not filed supplemental documentation or other evidence to show that the purchase is reasonable.

Therefore, the motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Incur Debt filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice.

54. [13-30580](#)-E-13 CHARLEE SHAW  
NLE-1 John R. Harrison

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID CUSICK  
9-17-13 [[15](#)]

Local Rule 9014-1(f)(2) Motion.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 17, 2013. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

**Final Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. The court has determined that oral argument will be not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

**The Objection is overruled as moot and the plan is not confirmed.** No appearance required.

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on September 20, 2013. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is overruled as moot and the plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Confirmation of the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection is overruled as moot and the proposed Chapter 13 Plan is not confirmed.

55. [13-29181](#)-E-13 SAM/DAYNA CROWLEY  
SPB-3 Stanley P. Berman

MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA, N.A.  
10-2-13 [[53](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 2, 2013. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Motion to Value Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to grant the Motion to Value Collateral and determine creditor's secured claim to be \$0.00.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 12727 La Barr Meadows Road, Grass Valley, California. The Debtor seeks to value the property at a fair market value of \$78,500.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor offers the Declaration of Mel Harris, a licensed real estate appraiser, who opines that the value of the property is \$78,500.00.

The first deed of trust secures a loan with a balance of approximately \$107,539.00. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$100,099.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 3054 East Westfall Road, Mariposa, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$127,917.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

56. [13-29181](#)-E-13 SAM/DAYNA CROWLEY  
SPB-4 Stanley P. Berman

MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA, N.A.  
10-2-13 [[59](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 2, 2013. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Motion to Value Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to grant the Motion to Value Collateral and determine creditor's secured claim to be \$0.00.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:



The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 3054 East Westfall Road, Mariposa, California. The Debtor seeks to value the property at a fair market value of \$127,917.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$137,144.00. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$89,655. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 3054 East Westfall Road, Mariposa, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$127,917.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

57. [12-24882](#)-E-13 JOSE AVALOS  
TJW-1 Timothy J. Walsh

MOTION TO MODIFY PLAN  
8-30-13 [[28](#)]

CASE DISMISSED 9/5/13

**Final Ruling:** The case having previously been dismissed, the Motion is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Modify having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

58. [11-30983](#)-E-13 JAY/MARIBEL ASH  
PGM-3 Peter G. Macaluso

MOTION TO APPROVE LOAN  
MODIFICATION  
9-18-13 [[52](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on September 18, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Approve the Loan Modification is granted.** No appearance required.

Wells Fargo Bank, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment from the current \$1,126.57 to \$784.87 for 36 months at interest rate of 4.035% for 36 months. Then the payment will increase to \$848.40 for 12 months at 5.035%. Then the payment increases to \$892.46 at 5.500% for the balance of the loan.

There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve the Loan Modification filed by debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that debtors, Jay Robert Ash and Maribel Ash, are authorized to amend the terms of their loan with Wells Fargo Bank, N.A., which is secured by the real property commonly known as 3134 Northstead Drive, Sacramento, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 61, in support of the Motion.

59. [11-47284-E-13](#) NICHOLAS/CRISTIE MCKNIGHT MOTION TO MODIFY PLAN  
CAH-2 C. Anthony Hughes 9-10-13 [[30](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 10, 2013. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to deny the Motion to Confirm the Modified Plan.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee objects on the grounds that the percentage proposed to unsecured creditors is unclear. The additional provisions state 8%, while section 2.15 proposes 7%. The Trustee states the plan will not be feasible at 8% to unsecured creditors, taking approximately 65 months to complete.

The Trustee also states that the Debtor's declaration indicates Nicholas McKnight's company has closed and that he is now on unemployment. Debtors state that they anticipate Debtor will only be able to find a job that pays him a gross monthly income of \$2,500, which will be just enough to pay daycare of \$1,575.00 after taxes are deducted. Debtors Schedule I now indicates the current unemployment income is \$1,733.33 per month. Trustee argues that Debtors fail to explain how they reached the conclusion that Debtor Nicholas McKnight will only be able to locate a job with a monthly gross income of \$2,500.00, when he was grossing \$6,000.00 in his prior job, and do not indicate whether they plan to modify the plan to increase the plan payment should Debtor obtain a job with a higher income.

Lastly, Trustee argues that Debtor may have additional disposable income as Debtor's Schedule I deletes monthly bonus income of \$130.07 received by joint debtor by way of an annual bonus averaged out over 12 months. Debtors calculated that joint debtor receives an annual bonus of \$2,630.00 and after taxes of \$1,100.34 (which appears excessive to the Trustee), and an offset of \$21.65, Debtor has a net bonus of \$1,560.83. Debtor does not provide an explanation as to what happened to this annual bonus even though it appears Debtor remained with the same employer.

The modified Plan complies does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

60. [11-46286-E-13](#) MARSHALL/GALE MORAN MOTION TO SELL  
SLH-4 Seth L. Hanson 9-12-13 [[65](#)]

Local Rule 9014-1(f)(1) Motion

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on September 12, 2013. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(a)(2). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

**The court's tentative decision is to grant the Motion to Permit Debtor to Sell Property.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Bankruptcy Code permits the Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Here, the Debtor proposes to sell the real property located at 2124 Butterfield Lane, Lincoln, California. The first deed of trust is in the amount of \$394,392.00 and the second deed of trust is in the amount of \$52,982.00. The Debtors have received an offer for the property for \$256,000. The lender, Wells Fargo Home Mortgage for the first and the second deed of trusts, has withheld approval of the terms of the short sale, pending the Court's approval of the short sale. The terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 68.

#### **TRUSTEE'S RESPONSE**

The trustee does not have an objection to the Motion to Sell. However, Trustee requests the Court to enter any order to address if the Trustee is to pay first or second deed of trust claims through the sale. The Debtor has scheduled the First Deed of Trust to be as surrender and the second deed of trust to be paid through the plan. However, the Motion indicates that the Wells Fargo lenders have withheld approval of the terms of the short sale pending approval of the short sale by the court, but that Debtors believe this sale is appropriate because both lenders have agreed to the terms of the short sale.

The court has become aware that financial institutions will not provide written proof of their agreement to a proposed short sale before the bankruptcy court authorizes it. This appears to be the predicament in this instance.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The Motion to Permit Debtor to Sell Property is granted, subject to the court considering any additional offers from other potential purchasers at the time set for the hearing for the sale of the property.

#### **ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to sell property filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Debtors Marshall Moran and Gale Moran ("Debtors"), are authorized to sell to Buyer, the residential real property commonly known as 2124 Butterfield Lane, Lincoln, California ("Real Property"), on the following terms:

1. The Real Property shall be sold to Buyer for \$256,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt.68.

2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount no more than six percent (6%) of the actual purchase price upon consummation of the sale.
5. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Debtors. Within fourteen (14) days of the close of escrow the Debtors shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

**IT IS FURTHER ORDERED**, that upon the close of this sale, the Chapter 13 Trustee shall make no further payments to any creditor releasing its lien as a condition of the sale.

61. [13-27986-E-13](#) DEBORAH CANDATE  
MET-2 Mary Ellen Terranella

CONTINUED MOTION TO CONFIRM  
PLAN  
7-26-13 [[26](#)]

**CONT. FROM 9-10-13**

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 26, 2013. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee and a creditor having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to deny the Motion to Confirm the Amended Plan.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such

other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

#### **PRIOR HEARING**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Trustee opposes the plan on the grounds that Class 4 of Debtor's amended plan lists the mortgage payment to Wells Fargo Home Mortgage as direct pay. Trustee states that Class 2A lists a debt to Wells Fargo for \$2,356.00, which Debtors indicate is for pre-petition arrears. Creditor Wells Fargo Bank, N.A. filed a proof of claim (no. 5) listing arrears of \$2,355.84, indicating two months delinquent payments. However, the Debtor's statement of financial affairs does not disclose any payments made to creditors in the 90 days prior to filing, which appears inaccurate.

The Trustee states he cannot determine that the Debtor can make payments called for by the plan, including the two mortgage payments which should now have been paid directly, without a reliable source of information.

Creditor Wells Fargo Bank, N.A. opposes Debtor's motion to confirm on the grounds that the plan fails to provide for the curing of the default on its secured claim.

Counsel for Debtor responds, stating that Debtor amended her plan specifically to provide for Creditor. Debtor states the claim consists of less than \$1,500 in mortgage payments, with an added escrow shortage and late charges. As the arrearage is less than \$1,500, Debtor states she provided it in class 2.

However, the arrearage listed in the proof of claim appears to be more than \$1,500 as stated by the Debtor. Debtor has not provided any evidence to the contrary. Further, Debtor has not addressed the inconsistency in the Statement of Financial Affairs and the two month arrearage (or possibly less) stated in the proof of claim. Finally, the Debtor has not show a basis for bifurcating the Wells Fargo Bank, N.A. secured claim into Class 2 and Class 4. While it may be cheaper for the Debtor to split the claim and deal with the pre-petition default separately, that is not permitted under the Plan in the Eastern District of California.

At the prior hearing, the parties agreed the Debtor will prepare proposed plan amendments to provide for payment of the Wells Fargo Bank, N.A. claim as a Class 1 Claim and then when the arrearage has been cured for it to automatically be provided for further payments as a Class 4 Claim. The amendments shall state the adjusted amount of Plan payments when the claim is provided for as a Class 4 claim.

The court continued the hearing to allow the amendments and any objections to be filed.

#### **DEBTOR'S PROPOSED AMENDMENTS**

Debtor filed the aforementioned proposed amendments on September 25, 2013, which shall be set forth in the order confirming the plan.

#### **TRUSTEE'S OBJECTION**



The Trustee opposes confirmation offering evidence that the Debtor is \$98.00 delinquent in plan payments. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. § 1325(a)(6).

The Trustee also notes that the proposed amendments state that the mortgage shall be paid as a Class 1 debt in the amount of \$798.99 and the mortgage arrears of \$2,355.84 is to be paid at \$300.00 per month - but Debtor does not specify what the actual plan payment will be. The Trustee states the plan payment must be at least \$1,157.00 to pay only the Class 1 dividends as well as the Trustee's compensation of 5%.

#### **DEBTOR'S REPLY**

Debtor responds, stating that she will be current with her plan payments by the date of the hearing. Debtor also clarifies that the plan payments shall be \$1,157.00 per month, commencing with the October 2013 payment.

However, the court does not have any evidence that the Debtor is in fact current on the plan payments to date. This is sufficient to deny confirmation. 11 U.S.C. § 1325(a)(6).

Based on the foregoing, the amended Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

62. [13-24587](#)-E-13 MOHAMMED KHAN  
DCN-3

MOTION TO VALUE COLLATERAL OF  
CIT GROUP AND OF UNITED  
RECOVERY SYSTEM  
8-26-13 [[69](#)]

**CASE DISMISSED 9/5/13**

**Final Ruling:** The case having previously been dismissed, the Motion is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

63. [13-28189-E-13](#) TONY/MARGARITA CERVANTES CONTINUED MOTION TO VALUE  
GG-1 Gerald B. Glazer COLLATERAL OF TRAVIS CREDIT  
UNION  
7-16-13 [[14](#)]

**CONT. FROM 9-10-13**

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 15, 2013. By the court's calculation, 57 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$9,070.00.** No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2009 Ford Escape XLT. The Debtor seeks to value the property at a replacement value of \$9,070.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred more than 910 days prior to filing of the petition, with a balance of

approximately \$24,825.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$9,070.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Travis Credit Union secured by an asset described as 2009 Ford Escape XLT is determined to be a secured claim in the amount of \$9,070.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the asset is \$9,070.00 and is encumbered by liens securing claims which exceed the value of the asset.

64.	<a href="#"><u>13-28189</u></a> -E-13 GG-3	TONY/MARGARITA CERVANTES Gerald B. Glazer	MOTION TO VALUE COLLATERAL OF MORTGAGE ELECTRONIC REGISTRATION SYSTEM 9-17-13 [ <a href="#"><u>46</u></a> ]
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 17, 2013. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the

matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The hearing on the Motion to Value Collateral is continued to 3:00 p.m. on October 29, 2013.** No appearance at the October 22, 2013 hearing is required.

Debtors seek to value the collateral of Mortgage Electronic Registration System ("MERS") as Nominee for RBS Citizens, N.A. and/or RBS Citizens, N.A.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 4830 Silverado Street, Fair Oaks, California. The Debtor seeks to value the property at a fair market value of \$306,944.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$362,486.00. MERS as Nominee for RBS Citizens, N.A.'s second deed of trust secures a loan with a balance of approximately \$23,479.75. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

This court can, and will, only enter an order adjudicating the rights or interests of parties who are named in the motion. The Motion states that the Debtor wants the court to determine rights of Mortgage Electronic Registration System ("MERS") as Nominee for RBS Citizens, N.A. and/or RBS Citizens, N.A. The court is unsure as to who or what is the target entity to have its claim valued. The court could interpret this request as only make a value determination as to MERS, for whatever interest it has, as a Nominee of RBS Citizens, N.A.

Further, the prayer only requests that the court determine a value for the real property, not determine the amount of a secured claim. If the court were to enter an order just determining the value of the property, the court is unsure as to what effect that would have on any specific creditor.

The hearing is continued to 3:00 p.m. on October 29, 2013, for counsel to consider the parties to the motion and relief actually being requested. No further pleadings shall be filed in connection with this motion.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review

of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion is continued to 3:00 p.m. on October 29, 2013. No further pleadings shall be filed by Movant in connection with this Motion.

65. [10-39090](#)-E-13 GRACIELLA VALLE MOTION TO SELL  
PGM-3 Peter G. Macaluso 9-18-13 [[60](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on September 18, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(a)(2). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

**The court's tentative decision is to grant the Motion to Permit Debtor to Sell Property.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Bankruptcy Code permits the Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Here, the Debtor proposes to sell the real property located on 7901 Tungsten Way, Sacramento, California. There is an pending offer from Victor A. Recinos for \$134,000.00. The Debtor states she expects to receive \$2,485.47 in relocation expenses.

The Chapter 13 Trustee filed a statement of non-opposition.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The Motion to Permit Debtor to Sell Property is granted. The court considered any additional offers from other potential purchasers as stated on the record for the hearing on this Motion.

**ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to sell property filed by the Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Debtor Graciella Valle ("Debtor"), is authorized to sell pursuant to 11 U.S.C. § 363(b) to Victor A. Recinos or nominee ("Buyer"), the residential real property commonly known as 7901 Tungsten Way, Sacramento, California ("Real Property"), on the following terms:

1. The Real Property shall be sold to Buyer for \$134,000.00, on the terms and conditions set forth in the Purchase Agreement, filed as Exhibit B in support of the Motion. Dckt. 63.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount no more than six percent (6%) of the actual purchase price upon consummation of the sale.
5. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Debtors. Within fourteen (14) days of the close of escrow the Debtors shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.
6. The Debtor is authorized to receive the \$2,485.47 relocation assistance monies, but no other fees, compensation, or other monies in connection with this sale. Within fourteen (14) days of the close of escrow, the Debtor shall provide to the Chapter 13 Trustee the final escrow closing statement.

66. [13-30990](#)-E-13 EVELYN WHITE  
NLE-1 Stephen J. Johnson

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID CUSICK  
9-26-13 [[23](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 26, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to sustain the Objection.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending motion to Value Collateral. The Debtors motion to value collateral was heard September 24, 2013 and was denied. The Debtor has not re-filed the motion. If the motion is not re-filed and granted, Debtor's plan does not have sufficient monies to pay the claim in full. No Motion to Value has been filed or set for hearing to date. Therefore, the objection is sustained.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

67. [11-25493](#)-E-13 GEORGE/FA'ANAPE DANIELSON MOTION TO APPROVE LOAN  
TJW-1 Timothy J. Walsh MODIFICATION  
10-7-13 [[25](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on October 7, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to grant the Motion to Approve the Loan Modification.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Wells Fargo Home Mortgage, a division of the Wells Fargo Bank, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will make the Debtor's monthly mortgage payment \$2,538.52. The modification will capitalize the pre-petition arrears and provides interest rate of 4.780% over the next 22 years.

There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

The court shall issue a minute order substantially in the following form holding that:



Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve the Loan Modification filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Debtors, George Basil Danielson and Fa'Anape Helen Danielson, are authorized to amend the terms of their loan with Wells Fargo Home Mortgage, a division of the Wells Fargo Bank, N.A., which is secured by the real property commonly known as 5060 Bickford Pl., Fairfield, California, and such other terms as stated in the Modification Agreement filed as Exhibit "1," Docket Entry No. 27, in support of the Motion.

68. [13-29694](#)-E-13 SINA TOGIAI MOTION TO CONFIRM PLAN  
SJS-3 Scott J. Sagaria 9-6-13 [[26](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 6, 2013. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Confirm the Amended Plan is granted. No appearance required.**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 23, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

69.	<a href="#"><u>13-30998</u></a> -E-13 <b>RALPH SETTEMBRINO</b> NLE-1 <b>Mary Ellen Terranella</b>	<b>OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 9-26-13 [<a href="#">27</a>]</b>
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**Final Ruling:** The Chapter 13 Trustee having filed a Withdrawal of the Objection to Confirmation, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Objection to Confirmation was dismissed without prejudice, and the matter is removed from the calendar.**

70.	<a href="#"><u>13-20799</u></a> -E-13 <b>CHRISTOPHER CRUZ</b> PGM-1 <b>Peter G. Macaluso</b>	<b>MOTION TO MODIFY PLAN 9-13-13 [<a href="#">19</a>]</b>
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Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 13, 2013. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

**The court's decision is to grant the Motion to Confirm the Modified Plan.** No appearance at the October 22, 2013 hearing is required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee objects on the basis that the Debtor has paid ahead \$350.00 under the proposed plan. Debtor's modified plan proposes plan payments of "\$2,100.00 through 8/13, \$385.00 x 53 months starting 9/13." Under the modified plan, Debtor would need to have paid a total of \$2,100.00 through August 2013 to the Trustee. Trustee states his records reflect that Debtor has actually paid a total of \$2,450.00.

Debtor responds, stating that a plan payment was made after the preparation of the motion and proposes that line 1.01 should read "\$2,450.00 through 8/13, \$385.00 x 53 starting 9/13." Debtor requests that this be corrected in the order confirming.

The Debtor have addressed the Trustee's concerns, the Motion is granted subject to the proposed changes.

The modified Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 13, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

71. 13-21699-E-13 GARLAND/CHRISTA ROSAURO  
WG-1 Gary H. Gale

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF GERALD L. WHITE  
FOR GARY H. GALE, DEBTORS'  
ATTORNEY(S), FEES: \$5,940.00,  
EXPENSES: \$281.00  
9-19-13 [20]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors', Chapter 13 Trustee, all creditors, and Office of the United States Trustee on September 20, 2013. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Final Application for Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Final Application for Fees is granted.** No appearance required.

#### **FEES REQUESTED**

Gary Hale, Counsel for the Debtors, makes a Final Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period October 15, 2012 through October 22, 2013. The Applicant and the Debtors signed a Chapter 13 Retainer Agreement on October 12, 2012.

#### **Description of Services for Which Fees Are Requested**

Chapter 13 Plan: Counsel spent 15.55 hours in this category. Counsel describes the services as preparing and filing the petition, schedules and the Plan by analyzing Debtors financial affairs, correspondence with the related parties, and .

Chapter 13 Plan Confirmation: Counsel spent 5.8 hours in this category. Counsel prepared the confirmation order and email to the trustee.

Review of Claims: Counsel spent 5.8 hours in this category. Counsel describes the services as review claims, communicating with the Debtors and creditors concerning the claims and reviewing Debtors' notice of filed claims.

Case Management: Counsel spent 5.8 hours in this category. Counsel describes the tasks performed as reviewing and responding to correspondence from the Court, Debtors, creditors, and the Trustee; advising counsel; and confirming the Plan.

## **DISCUSSION**

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A).

## **Benefit to the Estate**

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged as legal services, the attorney must still demonstrate that the work

performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the legal services undertaken as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [legal fee] tab without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

(a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*Id.* at 959.

A review of the application shows that Counsel's services allowed for efficient administration of the estate and confirmation of Chapter 13 Plan.

The Chapter 13 Trustee filed a statement of non-opposition.

#### **FEES ALLOWED**

The hourly rates for the fees billed in this case is \$300.00/hour. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of \$5,940.00 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

Counsel for the Trustee also seeks the allowance and recovery of costs and expenses in the amount of \$281.00 for fees paid to the court upon filing of the Voluntary Petition. The total costs in the amount of \$281.00 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

Counsel is allowed, and the Trustee is authorized to pay, the following amounts as compensation as a professional in this case:

Attorneys' Fees	\$5,659.00
Costs and Expenses	\$281.00

For a total final allowance of \$5,940.00 in Attorneys' Fees and Costs in this case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Counsel having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Gary Hale is allowed the following fees and expenses as a professional of the Estate:

Gary Hale, Counsel for Chapter 13 Trustee  
Applicant's Fees Allowed in the amount of \$5,659.00  
Applicants Expenses Allowed in the amount of \$281.00.

72.	<a href="#"><u>13-23599</u></a> -E-13	IVAN MONTELONGO	MOTION TO AVOID LIEN OF CHARLES
	PGM-4	Peter G. Macaluso	CUMMINS, JR.
			9-17-13 [ <a href="#"><u>65</u></a> ]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on September 17, 2013. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Motion to Avoid a Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

**The court's tentative decision is to deny the Motion to Avoid a Judicial Lien.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

A judgment was entered against the Debtor in favor of Charles Cummins, Jr. for the sum of \$5,015.05. The abstract of judgment was recorded with Sacramento County on September 10, 2007. That lien attached to the Debtor's residential real property commonly known as 4843 Skyway Drive, Fair Oaks, California.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$170,000.00 as of the date of the petition. The unavoidable consensual liens total \$350,149.36 on that same date according to Debtor's Schedule D.

However, the Debtor has not claimed an exemption on the subject real property in Schedule C. While after application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien, the fixing of this judicial lien does not impair the Debtor's exemption, as none exist on Schedule C, and its fixing cannot be avoided subject to 11 U.S.C. § 349(b)(1)(B).

A minute order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice.